3187. Also, petitions of the Chamber of Commerce of the State of New York, urging the defeat of the Howell-Barkley bill (S. 2646 and H. R. 7358); also Milton L. Bond and William E. Rowe and 42 other citizens of Roseville, Calif., urging the passage of the game refuge bill; to the Committee on Interstate and Foreign Commerce.

3188. Also, petitions of Irrigation Districts Association of California, relative to the proposed Roosevelt-Sequoia Park (H. R. 4095), and by Irrigation Districts Association of California, protesting against the Roosevelt-Sequoia Park bill (H. R. 4095); to the Committee on the Public Lands.

3189. Also, petitions of Mrs. G. E. Wilson and 27 others, of Los Molinos, Tehama County, Calif., protesting against the passage of any Sunday observance bill; Mr. John J. Southard and 32 others, of Los Molinos, Tehama County, Calif., protesting against the passage of any Sunday observance bill; Mr. Arnold Potter and 37 others, of Los Molinos, Tehama County, Calif., protesting against the passage of any Sunday observance bill; and Mr. J. F. Richardson and 37 others, of Los Molinos, Tehama County, Calif., protesting against the passage of any Sunday observance bill; to the Committee on the District of Columbia.

3190. By Mr. SPEAKS: Papers to accompany House bill 10114, granting an increase of pension to Arthur L. Hamilton; to the Committee on Pensions.

3191. Also, papers to accompany House bill 10578, granting an increase of pension to Josephine Miller; to the Committee on Pensions.

3192. By Mr. TAGUE: Petition of mayor of city of Boston, urging that the air mail be extended to the Boston air port at East Boston; to the Committee on the Post Office and Post Roads.

3193. Also, petition of National Industrial Council, urging that Senate Joint Resolution 109 or House Joint Resolution 68 be submitted to the consideration of the people; to the Committee on the Judiciary.

3194. By Mr. WATSON: Petition of the George N. Althouse Post, No. 39, the American Legion, Norristown, Pa., protesting against reduction of appropriation which would handicap the future of the National Guard of the United States; to the Committee on Military Affairs.

SENATE

SATURDAY, *December 13, 1924*

(Legislative day of Wednesday, December 10, 1924)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Farrell, one of its clerks, announced that the House had passed a bill (H. R. 5803) for the relief of John A. Bingham, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 88. An act for the relief of Louis Leavitt; and

S. 353. An act for the relief of Reuben R. Hunter.

PETITIONS AND MEMORIALS

Mr. WATSON presented memorials (numerously signed) of sundry citizens of Indianapolis, Ind., remonstrating against the passage of legislation providing for compulsory Sunday observance in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. CAPPER presented a memorial of sundry citizens of Collyer, Kans., remonstrating against the passage of legislation providing for compulsory Sunday observance in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. McCORMICK presented two memorials of sundry citizens of Peoria County and Springfield, all in the State of Illinois, remonstrating against the passage of legislation providing for compulsory Sunday observance in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. FESS presented resolutions adopted by the Seventh District Rehabilitation Committee of the American Legion (including the States of Ohio, Indiana, and Kentucky) at Cincinnati, Ohio, favoring the passage of legislation establishing a medical corps in the United States Veterans' Bureau, which was referred to the Committee on Finance.

Mr. WILLIS presented memorials of Warren B. Thomas, of Columbus; of Henry H. Howenstein and Ernest Coffee, of Akron; of W. C. Williamson and William Durham, of Cincinnati; and of A. G. Tame, of Cleveland, all in the State of Ohio, remonstrating against the ratification of the so-called Hay-Quesada treaty proposing to cede the Isle of Pines to Cuba, which were referred to the Committee on Foreign Relations.

He also presented memorials of F. P. Lindsay and 16 other citizens of Columbiana; of H. C. Shively and 16 other citizens of Berlin Center; of A. W. Bundy and 30 other citizens of Wauseon, and of W. Wallace Kay and 68 other citizens of Youngstown, all in the State of Ohio, remonstrating against the passage of legislation providing for compulsory Sunday observance in the District of Columbia, which were referred to the Committee on the District of Columbia.

REPORTS OF THE INDIAN AFFAIRS COMMITTEE

Mr. HARRELD, from the Committee on Indian Affairs, to which were referred the following bills and resolution, reported them severally without amendment and submitted reports thereon:

A bill (S. 2375) to facilitate the suppression of the intoxicating liquor traffic among Indians (Rept. No. 805);

A bill (H. R. 26) to compensate the Chippewa Indians of Minnesota for lands disposed of under the provisions of the free homestead act (Rept. No. 806);

A bill (H. R. 6541) to amend an act entitled "An act to provide for the disposal of the unallotted lands on the Omaha Indian Reservation, in the State of Nebraska (Rept. No. 807);

A bill (H. R. 8545) conferring jurisdiction on the Court of Claims to determine and report upon the interest, title, ownership, and right of possession of the Yankton Band of Santee Sioux Indians to the Red Pipestone Quarries, Minnesota (Rept. No. 808); and

A resolution (S. Res. 271) authorizing preparation of compilation of Indian laws and treaties (Rept. No. 809).

ENROLLED BILLS PRESENTED

Mr. WATSON, from the Committee on Enrolled Bills, reported that on December 12, 1924, that committee presented to the President of the United States the following enrolled bills:

S. 116. An act to amend section 196 of the Code of Law for the District of Columbia;

S. 933. An act to provide for the examination and registration of architects and to regulate the practice of architecture in the District of Columbia; and

S. 1343. An act to authorize the widening of Fourth Street south of Cedar Street NW. in the District of Columbia, and for other purposes.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. SMITH:

A bill (S. 3659) granting an increase of pension to William F. Rowland; to the Committee on Pensions.

By Mr. WALSH of Massachusetts:

A bill (S. 3660) granting a pension to Etta M. Howard;

A bill (S. 3661) granting a pension to Thomas J. Kelly (with accompanying papers); and

A bill (S. 3662) granting an increase of pension to Thomas Coriam; to the Committee on Pensions.

By Mr. KEYES:

A bill (S. 3663) to amend section 7 of an act entitled "An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," approved March 1, 1911 (36 Stat. 961); to the Committee on Commerce.

By Mr. FERNALD:

A bill (S. 3664) granting a pension to Charles R. Fish (with accompanying papers); to the Committee on Pensions.

By Mr. PEPPER:

A bill (S. 3665) for the relief of Commander Charles James Anderson, United States Naval Reserve Force; to the Committee on Naval Affairs.

By Mr. KENDRICK:

A bill (S. 3666) for the exchange of lands in the Custer National Forest, Mont.; to the Committee on Public Lands and Surveys.

By Mr. MOSES:

A bill (S. 3667) granting a pension to Etta H. Sleeper (with accompanying papers); to the Committee on Pensions.

By Mr. RANSDELL:

A bill (S. 3668) authorizing the construction of additional hospital facilities for the port of New Orleans, La.; to the Committee on Appropriations.

By Mr. BURSUM:

A bill (S. 3669) granting a pension to Jose Ke-wa-ty, sometimes called Go-y-ty; to the Committee on Pensions.

CHARLESTON HARBOR, S. C.

Mr. SMITH submitted an amendment intended to be proposed by him to the bill (H. R. 8914) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

WATER-FRONT DEVELOPMENT AT NAVAL BASE OF SAN DIEGO

Mr. SHORTRIDGE submitted an amendment intended to be proposed by him to the bill (H. R. 2688) providing for sundry matters affecting the naval service, and for other purposes, which was referred to the Committee on Naval Affairs and ordered to be printed.

PRECEDENTS AND DECISIONS OF THE SENATE

Mr. CURTIS submitted the following resolution (S. Res. 284), which was referred to the Committee on Printing:

Resolved, That the Precedents and Decisions on Points of Order in the United States Senate, revised and indexed to and including the Sixty-eighth Congress, be printed in one volume as a Senate document, and that 1,000 additional copies be printed for the use of the Senate.

HOUSE BILL REFERRED

The bill (H. R. 5803) for the relief of John A. Bingham was read twice by its title and referred to the Committee on Claims.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the Speaker of the House had affixed his signature to the following enrolled bills, and they were thereupon signed by the President pro tempore:

H. R. 7052. An act for the relief of Geston P. Hunt; and

H. R. 8687. An act to authorize alterations to certain naval vessels and to provide for the construction of additional vessels.

RECLASSIFICATION OF POSTAL SALARIES—VETO MESSAGE

Mr. EDGE. Mr. President, I wish to ask the indulgence of those in charge of the pending bill to permit me to make one final effort to secure an agreement on a time to vote on the unfinished business known as the postal employees salary increase bill.

Mr. OVERMAN. Mr. President, I suggest the absence of a quorum. If the postal matter is coming up, we ought to have a quorum.

The PRESIDENT pro tempore. The Clerk will call the roll.

The principal legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fernald	Ladd	Robinson
Ball	Ferris	McCormick	Sheppard
Bayard	Fess	McKellar	Shipstead
Borah	Fletcher	McKinley	Shortridge
Brookhart	Frazier	McLean	Simmons
Broussard	George	McNary	Smith
Bruce	Greene	Mayfield	Smoot
Bursum	Hale	Means	Spencer
Butler	Harreld	Metcalf	Stanfield
Capper	Harris	Moses	Stanley
Caraway	Harrison	Neely	Sterling
Couzens	Heflin	Norris	Swanson
Cummins	Howell	Oddie	Trammell
Curtis	Johnson, Calif.	Overman	Underwood
Dale	Jones, N. Mex.	Pepper	Walsh, Mass.
Dial	Jones, Wash.	Phipps	Walsh, Mont.
Dill	Kendrick	Ransdell	Watson
Edge	Keyes	Reed, Mo.	Wheeler
Ernst	King	Reed, Pa.	Willis

The PRESIDENT pro tempore. Seventy-six Senators have answered to the roll call. There is a quorum present.

Mr. EDGE. As I have announced on several occasions, because of the failure of previous efforts to secure the unanimous consent of the Senate to a day certain to vote upon the postal salary increase bill to which I have referred, I had intended moving at the first opportunity to take it up. However, many Senators on both sides of the Chamber have stated that because of the holidays their engagements would take them out of the city and they would be very much relieved if it were possible to have a day certain fixed upon which it could be known that the bill would be laid before the Senate. So I have prepared another unanimous-consent proposition which I send to the desk and ask to have read.

The PRESIDENT pro tempore. The Senator from New Jersey presents a request for unanimous consent which the Clerk will report.

The reading clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

It is agreed by unanimous consent that at the conclusion of the routine morning business on the calendar day of January 8, 1925, the Senate will proceed to the reconsideration and final disposition of the bill (S. 1898) reclassifying salaries of postmasters and employees of the Postal Service and readjusting their salaries and compensation on an equitable basis, and for other purposes, heretofore returned by the President of the United States without his approval; that no Senator shall speak longer than one hour on the bill, and said bill shall not be laid aside or superseded except by unanimous consent by any other business.

The PRESIDENT pro tempore. The Chair desires to observe that a request for unanimous consent is not debatable, but the Senate has found it necessary to have a reasonable interchange of views upon the subject. The Chair reserves the right, however, to arrest the debate whenever it seems best to the Chair.

Mr. EDGE. I have already stated that the object of the proposal is to permit Senators to arrange their plans in ample time so they can be here when the bill shall be laid before the Senate for final disposition.

The PRESIDENT pro tempore. Is there objection to the request for unanimous consent submitted by the Senator from New Jersey?

Mr. STERLING. Mr. President, a parliamentary inquiry. I observe that the unanimous-consent agreement provides for the final disposition of the bill after it is taken up, and the inquiry is as to whether or not that will preclude a motion to refer the bill, together with the veto message of the President, to the Committee on Post Offices and Post Roads?

The PRESIDENT pro tempore. Does the Senator propound that as a parliamentary inquiry?

Mr. STERLING. Yes.

The PRESIDENT pro tempore. As at present advised the Chair would construe that the unanimous-consent agreement as proposed would preclude a motion to refer.

Mr. BORAH. That is not the understanding of the Senator who offers the unanimous-consent request, and if it is so understood and is to be so construed by the Chair the unanimous-consent agreement will have to be modified.

Mr. STERLING. Yes.

Mr. EDGE. The Chair, of course, is far better informed in the matter of parliamentary decisions and precedents than I am, but my own analysis would be that any motion could be received during the consideration of the bill, and that it would be voted upon, but that the bill must be finally disposed of before other business could take its place.

The PRESIDENT pro tempore. The Chair is of the opinion that a motion to recommit or commit the bill to any committee would not be a final disposition of it.

Mr. STERLING. I shall have to object.

Mr. CURTIS. I suggest that the Senator from New Jersey modify his proposition so as to provide that one motion to recommit may be permitted.

Mr. EDGE. I understand the regular form used in the House of Representatives, and I presume it to be the established precedent here, provides that a motion to commit is always in order. I am entirely willing to add that provision to the proposal, because I had always assumed such a motion to be in order, and so stated in the debate here two or three days ago.

The PRESIDENT pro tempore. Does the Senator from New Jersey modify his request?

Mr. EDGE. Yes; I will modify it.

Mr. DILL. Mr. President——

The PRESIDENT pro tempore. Just a moment, until the request is modified as suggested by the Senator from New Jersey.

Mr. WALSH of Massachusetts. Mr. President, I should like to ask the Senator from New Jersey if he is going to modify his unanimous-consent request, why he puts in the words "shall proceed to a reconsideration." Why is not the only issue a consideration of the President's veto?

Mr. EDGE. I think the words "proceed to a reconsideration" are the usual form.

Mr. WALSH of Massachusetts. We could not reconsider a veto that has not yet been acted on.

Mr. EDGE. We are reconsidering the bill that was vetoed.

Mr. CURTIS. The Constitution provides that the bill shall be reconsidered.

The PRESIDENT pro tempore. The Chair will direct that the qualified form of the unanimous-consent request be read.

Mr. DILL. Before that is done, as I understand the request for unanimous consent, it now proposes to include in it that which is not in accordance with the rules of the Senate, namely, that a motion to refer or recommit the matter to a committee shall be in order. If that were the case, I should have to object.

Mr. STERLING. Is there any rule of the Senate to that effect?

Mr. EDGE. I trust the Senator from Washington will withhold his objection. We have certainly made every possible effort in the interest of this proposed legislation and to bring it to a vote. If a majority of the Senate are favorable to recommitting the bill, it certainly can not be passed over the veto. I can not conceive that the addition of that language can have the slightest effect upon the final disposition of the measure.

Mr. DILL. I want to say to the Senator, if he will yield to me——

Mr. EDGE. I yield.

Mr. DILL. That the motion will be made and the Senate will be called upon to vote on the motion to recommit before we vote on the veto message. If the motion to recommit carries, we shall never vote on the veto message. I shall not consent to have the right to vote on the veto message taken away.

Mr. EDGE. If the Senator from Washington will permit me, the same condition will prevail if we do not have a unanimous-consent agreement. A motion to recommit can be made at any time, and if it shall prevail the bill will go to the committee just the same.

Mr. DILL. But probably we shall get the bill up considerably sooner anyway.

Mr. EDGE. Quite the contrary. I am trying to impress the Senator with the conviction that it is with the assurance that we shall have the veto finally disposed of that I make this proposition. Otherwise, what is the parliamentary situation? I have given this matter much thought. Under a ruling by the President pro tempore we can not get the measure up while the Muscle Shoals legislation is pending, unless it be during the morning hour; and everyone knows that that would not permit us to dispose of the message. In fact we have been recessing from day to day. No one can decide how long it is going to require to dispose of the pending Muscle Shoals bill. Under a resolution which has been agreed to Congress adjourns next Saturday for 10 days. We shall come back on the 29th of December. Then New Year's Day will intervene, and apparently, under the present situation, the best I can do is to make a motion some time after that to proceed to the consideration of the veto message. Then the Senate can do as it pleases with the motion. It can buffet the motion; it can filibuster the motion; it can discuss it for hours. If it wants to delay the matter it is reasonable to assume we would not get a vote on this motion until after the 8th of January. Now, I am trying to have the question definitely settled in the interest of the postal employees' salary measure and in the interest of its orderly disposal. I can not understand how anyone can object to this proposition who is in favor of the proposed legislation.

Mr. STERLING. Mr. President, let me say that a unanimous-consent agreement which would deny the right to make a motion to refer the bill and veto message to the committee would be a denial of a right which has long been exercised both in the other House and in the Senate of the United States in regard to referring to a committee a bill which has been vetoed, together with the veto message. There are innumerable precedents to that effect in the other House, and there are also some in the Senate.

Mr. REED of Missouri and other Senators rose.

The PRESIDENT pro tempore. Let the Secretary read the modified form of the proposed unanimous-consent agreement in order that discussion may properly proceed with reference to it.

The reading clerk read as follows:

It is agreed by unanimous consent that at the conclusion of the routine morning business on the calendar day of January 8, 1925, the Senate will proceed to the reconsideration and final disposition of the bill (S. 1898) reclassifying salaries of postmasters and employees of the Postal Service and readjusting their salaries and compensation on an equitable basis, and for other purposes, heretofore returned by the President of the United States without his approval; that no Senator shall speak longer than one hour on the bill, and said bill shall not be laid aside or superseded except by unanimous consent by any other business. But this shall not preclude the offering of a motion to refer the bill and message to a committee.

The PRESIDENT pro tempore. Is there objection to entering into the unanimous-consent agreement?

Mr. STERLING. I suggest the changing of the wording in the unanimous-consent agreement. Instead of reading "to a committee," I think it should read "to the Committee on Post Offices and Post Roads," rather than to a committee, which might imply a special or select committee.

Mr. REED of Missouri. Mr. President, I was at first prepared reluctantly to accept the proposition to postpone action on this measure until the 8th of January, 1925. I am not, however, in favor of the suggested agreement as modified, which proposes not definite and final action on the veto message on the 8th of January but reference to a committee.

I think I understand this proposition. The President vetoed the postal employees' salary bill. During all of the months when Congress was not in session, of course the question remained in abeyance. Under the ordinary procedure in the Senate the veto would have been laid before the Senate for action almost immediately after its reception. I mean by "immediately" within a day or two days. We who favor this legislation came here prepared to meet the issue and expecting prompt action, but every effort has been made to prevent prompt action. It may not be apparent upon the face of things, but it does not require much experience in this body to know what is going on. Now, the fact is that those who want to sustain the President desire time. They are fearful of the result if the measure is brought to prompt decision. I do not think anybody with any degree of candor can deny that statement.

The measure is one that has been fully discussed upon the floor of the Senate; it has been a long time pending in Congress; hearings have been had, and there is no occasion for any prolonged debate upon this question. There is now a plain skirmish for time, and we know from past experience what that means.

Mr. EDGE. Mr. President, will the Senator from Missouri yield for a moment?

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from New Jersey?

Mr. REED of Missouri. I will yield for a question, but I do not care to yield for a break in what I am saying.

Mr. EDGE. I simply wanted to draw the Senator's attention to the fact—with which, perhaps, he is not familiar, for according to my recollection he was not present at the time—that the Senator from New Jersey presented a unanimous-consent proposal a week or 10 days ago to have the vote taken yesterday. So that every effort, so far as the sponsor of the bill is concerned, has been made to reach an early vote.

Mr. REED of Missouri. I am not criticizing the Senator from New Jersey directly or by implication.

Then we were met on yesterday or the day before with a suave proposition that we ought to postpone action upon this measure for 30 days in order that a bill might be drawn, introduced in the House of Representatives, passed there, and passed in the Senate within 30 days, to raise revenue sufficient to meet the expenditures to be incurred under the bill which the President has vetoed. When inquiry was made it was found that that bill had not yet been written and no one knew what its terms would be, but it was suggested that the money necessary would be raised by increasing the postal rates on the newspapers. Of course, that means that the old artifice is to be employed, namely, that when a measure is proposed which increases the expenditures of the Government the tax shall at the same time be levied, so that every person who has to pay the tax shall rally to the defeat of the proposition.

Without charging any bad motives on behalf of anybody, it is perfectly plain to me that some shrewd legislator has concluded that in order to sustain the President's veto it would be well to rally to the support of the President and to the opposition of the measure the newspapers and periodicals of the country, which would come here saying, "You propose to pay additional wages to the postal employees and you propose to make us pay for the raise." So we would have presented here not only the President and the supporters of his veto but we would have that force recruited by a large outside force here present to insist that that veto must be sustained because of the iniquities in the accompanying measure.

The PRESIDENT pro tempore. The Chair is constrained to hold that this question is not debatable.

Mr. REED of Missouri. It is a little late so to hold, Mr. President. Everybody else who wanted to speak has been indulged, and I hope I will be permitted to conclude my remarks.

The PRESIDENT pro tempore. The Chair suggested that he would permit a reasonable interchange of the views of the Senators, according to the practice of the Senate.

Mr. REED of Missouri. But, Mr. President, you are getting nothing now but pure reason.

Mr. MOSES. I ask unanimous consent that the Senator from Missouri may conclude his remarks.

Mr. REED of Missouri. I think my discussion has been reasonable; I do not know.

Mr. BORAH. Of course, it is reasonable, but if the debate is going to continue we want the unanimous-consent request to include all Senators who wish to discuss it.

Mr. REED of Missouri. Certainly.

Now, Mr. President, I have about reached the point that I want to make in regard to this proposition. We were ready to consent to the 8th provided we obtained a vote which would be a final vote on the 8th; but the proposition is now modified so that we may not get a final vote on the 8th at all, but only a reference to a committee. If it is referred to a committee, the committee can hold the measure for an indefinite period, and probably will hold it to such a period as will make it impossible to have action upon the veto at this session of Congress. And so, Mr. President, in the present form, with the amendment made as it is, I object.

The PRESIDENT pro tempore. Objection is made.

Mr. EDGE. Mr. President, will the Senator answer just one question before he takes his seat? Does he think, as a friend of the legislation, that the objection to this unanimous-consent agreement will actually bring a vote on the veto message more quickly than if it is entered into?

Mr. REED of Missouri. Yes. If you will strike out the last clause and let the proposition stand as it did stand for a vote, so that we will know we will get a vote on the 8th, I am agreeable; but if you propose, instead of that, a reference to a committee, with an indefinite postponement of action, we might as well fight it out on the floor and see if we can get action.

Mr. EDGE. As I understand the rules, we can not prevent a motion to refer to a committee. We can not prevent a majority of the Senate, on a motion of that kind, referring it to a committee, if the majority desire to do so; but I can only point out again the practical situation. If we can not defeat a motion to recommit, we never can pass the bill over the veto.

Mr. REED of Missouri. But we may get the matter up before the 8th; and this proposition as it stands now means, or readily might mean, an indefinite postponement. In the meantime, if we do not make this consent, we can fight the proposition out on this floor, and we will see whether we can get a vote or not. We will try to see whether the other business of the Senate does not stop until this is transacted.

Mr. STERLING and Mr. NORRIS addressed the Chair.

The PRESIDENT pro tempore. The Senator from South Dakota.

Mr. STERLING. Mr. President, I desire to reply to some of the implications, anyhow, of the Senator from Missouri in this matter.

Mr. NORRIS. Mr. President, may I ask the Senator from South Dakota a question there?

Mr. STERLING. I yield.

Mr. NORRIS. Will he add to this unanimous-consent agreement, and will the Senator from New Jersey consent that if a motion is made to refer the matter to the committee, said motion shall be voted on without debate?

Mr. STERLING. Mr. President, I could not consent to that.

Mr. SMOOT. Under the rules it is not debatable.

Mr. CURTIS. Mr. President, under the rules the motion is not debatable.

Mr. EDGE. I will say, in answer to the Senator from Nebraska, if the Senator from South Dakota will yield, that I shall be glad to add that; but it seems to me unnecessary, because under the rules, as I understand, a motion to recommit is not debatable.

Mr. STERLING. Mr. President, we have an example, I think, of where a motion to refer a veto message, together with the bill, was debated, and debated at great length, in the Senate of the United States. I do not recall now just the occasion.

The PRESIDENT pro tempore. The Chair is compelled to say that a discussion of that question is not in order at this time.

Mr. STERLING. Mr. President, I understood that I was recognized by the Chair, and I think I have the floor in virtue of that recognition. I was about to reply to some of the statements made by the Senator from Missouri [Mr. REED].

Mr. NEELY. I call for the regular order.

Mr. STERLING. The Senator from Missouri conveys the idea that there is an intent upon the part of some one to delay action upon this legislation. That is not the idea. I expect to receive to-day a bill prepared at the Post Office Department which will increase the rates on various classes of mail matter, and my thought all along has been to make that bill a part of a new bill for the increase of salaries, leaving the salaries as they are provided in the bill which the President vetoed.

What is the situation now with reference to the receipts of the various branches of the Post Office Service? Second-class mail is nearly $75,000,000 behind, lacking that much of paying its way.

Mr. NORRIS. Mr. President, may I interrupt the Senator?

Mr. STERLING. Yes.

Mr. NORRIS. I should like to call the attention of the Senator to the fact that while, of course, he has a perfect right to discuss that matter, my colleague [Mr. HOWELL] had the floor when the Senate took a recess, debating the pending motion; and it was understood when he yielded the floor that he could resume when the Senate reconvened.

Mr. STERLING. Very well. I shall be through in just a moment, I will say to the Senator from Nebraska.

The PRESIDENT pro tempore. The Chair desires to say again that this question is not debatable. The Chair desires, however, in accordance with the custom of the Senate, to give an opportunity for an interchange of views upon the wisdom of granting or refusing this unanimous-consent agreement; but the Chair does not desire to hear a debate upon extraneous matters.

Mr. NORRIS. Mr. President, will the Senator yield for just a moment? I desire to call the attention of the Chair to the fact that there is a motion pending, and the Senator from South Dakota now legally has the floor, and, of course, he can talk about anything he wants to. I simply desired to call the attention of the Senator to the fact that my colleague [Mr. HOWELL] had the floor, and as a matter of courtesy I think he ought to be permitted to continue.

Mr. STERLING. I conclude with this statement, Mr. President: In view of what I have said and what has been said by other Senators on the floor here, I thought it but reasonable that this bill should be referred to the committee for the purpose of considering the bill that will be presented by the Post Office Department for the increase of rates to ascertain whether we can not combine the two propositions, and bring out a bill that will be satisfactory to the Senate and do justice to the people of the United States. There is no intention of causing any unnecessary delay.

The PRESIDENT pro tempore. Objection has been made. The Chair recognizes the Senator from Nebraska [Mr. HOWELL].

MUSCLE SHOALS

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 518) to authorize and direct the Secretary of War, for national defense in time of war and for the production of fertilizers and other useful products in time of peace, to sell to Henry Ford, or a corporation to be incorporated by him, nitrate plant No. 1, at Sheffield, Ala.; nitrate plant No. 2, at Muscle Shoals, Ala.; Waco Quarry, near Russellville, Ala.; steam plower plant to be located and constructed at or near Lock and Dam No. 17 on the Black Warrior River, Ala., with right of way and transmission line to nitrate plant No. 2, Muscle Shoals, Ala.; and to lease to Henry Ford, or a corporation to be incorporated by him, Dam No. 2 and Dam No. 3 (as designated in H. Doc. 1262, 64th Cong., 1st sess.), including power stations when constructed as provided herein, and for other purposes.

The PRESIDENT pro tempore. The question is upon agreeing to the amendment proposed by the Senator from South Carolina [Mr. SMITH] to the substitute of the Senator from Alabama [Mr. UNDERWOOD], on which the Senator from Nebraska [Mr. HOWELL] is entitled to the floor.

PERSONAL EXPLANATION

Mr. UNDERWOOD. Mr. President, I do not often rise to a question of personal privilege, but I have lying on my desk an editorial that is in one of the morning papers, and probably the editorial was based on an article that purports to come from the Senator from Nebraska, which I am sure does not carry the facts, as I think the Senator will agree if he will refer to the article that attempts to quote him. I should like to make my statement now in regard to this matter of personal privilege as an immediate answer, and then it will give the Senator a chance to reply, if he will kindly yield for that purpose. I know he has the floor, and I can not take it away from him.

Mr. HOWELL. I yield.

Mr. UNDERWOOD. Mr. President, it is not often that I worry myself about any newspaper comment. I have been in Congress nearly 30 years. I have handled tariff legislation that brings comment and criticism, and I think a man in public life should be trained to accept fire coming from the opposition;

and if it is honest, truthful criticism he should accept his part and not complain about it, because I think in fact honest and truthful criticism is most beneficial both to Congress and to the individual Member of Congress. Of course, however, when a propaganda is organized for the evident purpose, through lies, of creating misunderstanding and a misinterpretation to the American people in order to mislead them the man involved not only must rise to defend himself but it is his duty to make very clear what stands behind the libel and the falsehood uttered.

There is in the Washington Herald this morning an editorial that deliberately tries to put me in a position that I never have occupied and do not occupy. Unfortunately, within the year this paper was guilty of a somewhat similar offense. I called on the paper to correct it the next morning, and that was done, and I let it pass; but as this involves a great public question, as well as myself, I would not be doing justice either to myself, to the Senate, or to my constituency if I did not challenge the lie that is editorially uttered in this paper. I ask the Senate to allow me to read it to them at this time.

The heading of the editorial is:

ANOTHER TEAPOT DOME IS THRUST UPON MR. COOLIDGE

President Coolidge is a wise, courageous, and patriotic leader. Once he has gone to the bottom of a subject he is likely to decide rightly about it. Therefore, the country can have confidence that President Coolidge will disregard those advisers who seek his support of the Underwood bill, now in the Senate, authorizing the Secretary of War to "lease" Muscle Shoals for 50 years to the Alabama Power Co.

Let me stop there to interpolate that under the Underwood bill the Secretary of War is authorized to make a lease subject to the approval of the President, and the Secretary of War can not make the lease unless it receives the approval of the President of the United States. Next, let me say again, as I have said before, that the bill I introduced was introduced without any consultation with the Alabama Power Co. or any other power company; that the only talk I have had with an officer of the Alabama Power Co. was after the bill was written and came to the Senate in that form; and he stated to me then that he would not make a bid under the terms of my bill if it became a law, because he said he did not propose to go into the fertilizer business. That man's name is Mr. Thomas Martin, and he is president of the Alabama Power Co.; and yet some Senators on this floor have sought to connect this bill with the Alabama Power Co.

I am always polite to my colleagues; but I want to challenge the statement of any man, on this floor or off of it, who seeks to say that the bill I have introduced has any connection at all with the Alabama Power Co. The statement is false in its conception and in its intention. I know perfectly well, and you know, that for the last three or four years I have been supporting Mr. Ford's offer to take over the shoals. If you know anything, you know that the Alabama Power Co. has been before the committee having this legislation in charge fighting the Ford offer.

The Alabama Power Co. has been collaborating on the other side of the question and suggesting a power bill, not a bill for fertilizers and national defense, and I challenge any man in the Senate to deny that statement.

This editorial challenges the bill as a steal. There are just two parts to the bill. One provides that any lease which may be made must contain a clause that would compel the making of 40,000 tons of nitrogen for national defense and a requisite amount of fertilizer to consume it, and that the contract shall provide for not less than 4 per cent on the cost of the dam. The President of the United States, through his Secretary of War, would have the right and power under this bill, subject to the limitations I have just named, to make any kind of a lease he desired. I ask any man who challenges that statement to do so now.

It will be absolutely in the hands of the President of the United States. The bill says the Secretary of War shall have the power to make the lease, subject to the approval of the President. Of course, the President himself could not conduct the negotiations and make the contracts. He would have to have an agent, and if I struck the provision out providing that the Secretary of War should conduct the negotiations and just said the President, as the Secretary of War is the war officer charged with the national defense and has had under his command the building of this great plant, he, in all human probability, is the man the President would pick to initially make the contract, subject to his approval. So in the end it would have to come back to the President of the United States.

Before I go further in my remarks, let me continue the reading:

President Coolidge can not afford and does not want a Teapot Dome scandal in his administration. He is being offered a greater scandal in this proposal of Senator OSCAR UNDERWOOD.

"Offered a scandal." Mark the lie that lay in the mouth of the editor of this paper when he wrote those words, trying to hitch this matter up with a scandal such as the Teapot Dome scandal, when the only limitation on the power of the President is that requiring him to make the lease with a provision in it for the production of nitrogen for national defense and fertilizer. Otherwise, he can make the lease as he desires. This editor tries to placate the President in his opening words by saying he is "a wise, courageous, and patriotic leader," as he is; and then he says that because I put in the hands of that wise, courageous, and patriotic leader the power to make a lease to dispose of this property that there is a greater scandal than the Teapot Dome.

As a matter of fact, I have no doubt that that editorial was purchased by interests who are trying to gobble this power. I do not know, I have no proof of it, but it bears on its face evidence that the corrupting hand is behind this libel. Listen further:

Who is OSCAR UNDERWOOD? He is an able man, capable of high statesmanship, but since his entrance into Congress his ability and his statesmanship have often been at the service of the railroads and the other great corporations seeking public privileges without paying for them. Just now his talents and ability are working in the interest of the central figure in the Electric Power Trust—the General Electric Co. It owns the Electric Bond & Share Co., which has stock ownership and its own directors in Mr. UNDERWOOD'S Alabama Power Co., to which the Senate of the United States is asked to give away the second most valuable property of the Nation, second only to the Panama Canal.

Mr. President, there never was a lie that was more deliberate and manifest than the utterance of this paper. There never has been a time in the 30 years that I have been in the Congress of the United States when I have ever served, directly or indirectly, the great corporations of Alabama or of the United States, and I challenge any man to show that I have. I voted for the Esch-Cummins bill, and I got a great deal of criticism on account of that vote. I was on the general committee which wrote the bill, but I was not on the conference committee. I accepted the conference report, as did the other Members of the Senate who voted for it. Outside of that one vote, I do not recall any time when I could have been said to have voted for any railroad legislation which the railroads wanted. If I have, it was not anything that I was fostering, and it has gone entirely out of my mind. I voted for the Esch-Cummins bill because we had to take the railroads out of the Government's hands and put them back into the owners' hands.

Listen to this editorial further:

But since his entrance into Congress his ability and his statesmanship have often been at the service of the railroads and the other great corporations.

Mr. President, if there is one thing that stands out distinctively in my career, it is the writing of a tariff bill by the committee of which I was chairman, where I had all of the great industrial corporations of America before my committee, and no man has ever charged that I wrote that bill, or that the committee of which I was chairman wrote that bill, in the interest of great corporations. The real truth about it is that when it came to the writing of the bill I put on the free list the items in which either myself or my family was interested and most of the great iron and steel commodities of the Birmingham district; not that I was discriminating against them, but I knew they did not need a tariff. Was that yielding to the demands of great corporation interests, when I was putting the products of my own district and my own State on the free list?

Listen to this language:

* * * the central figure in the Electric Power Trust—the General Electric Co. It owns the Electric Bond & Share Co., which has stock ownership and its own directors in Mr. UNDERWOOD'S Alabama Power Co., to which the Senate of the United States is asked to give away the second most valuable property of the Nation.

I know, as well as this editor knows, that the General Electric Co., through these other corporations, is the final owner of the Alabama Power Co. That is true. But when he says "Mr. UNDERWOOD'S Alabama Power Co.," he is trying to insert by indirection a malicious lie into the brains of the American people. I have no connection whatever with the Alabama Power Co., and never have had, either as a stockholder, an

individual, or an associate—none whatever—and what I am trying to do by this bill is not to create a great power project. I am making a fight here to give the President of the United States power, in accordance with the message which he sent to Congress within this month, to allow this property to be operated to make nitrogen for national defense and fertilizers for the people of America, the farmers of America; and it is because I take that stand that these men who are behind the Power Trust which wants this power are trying to connect me and my bill with that interest—to defeat it by an infamous lie; that is all.

The editorial continues:

The Government of the United States has spent $135,000,000 at Muscle Shoals, beginning the project in war time. This $135,000,000 of property constitutes perhaps the most valuable manufacturing property in the world. It includes two entire towns, scores of miles of railroad, two huge steam-power plants, and two great nitrate factories, one of them the largest of its kind in the world. Finally—and this is what the Power Trust is after—Muscle Shoals has the huge Wilson Dam and power house, which converts the rushing river into 100,000 horsepower of electric energy. When the Government has completed the additional dams and storage reservoirs in the Tennessee River it will be providing 500,000 horsepower—a second Niagara.

Incidentally, I wish to say that the committee bill is the one which would develop this great horsepower, not my bill. My bill relates to Dam No. 2, and not to the development of the upper reaches of the Tennessee River. That is provided for in the bill reported by the committee as a substitute for the Ford offer.

I continue reading:

The Power Trust, always wise and always awake, is terrified at the prospect of Senator NORRIS'S bill.

I think if Senators will read the testimony before the committee they will find that the gentlemen who are interested in power were testifying favorably to a power bill and not to the Ford offer, which is a nitrogen and fertilizer proposition; and the Ford provisions are the provisions in the bill I have introduced.

Take the testimony yourselves and find out which side the power men are on. Every line of testimony which they delivered was against Ford, and my bill is the Ford offer, except that it opens the matter to any bidder in the world, and the committee bill, although it refers to the production of fertilizer in an experimental way, is a great power bill. Its purpose is to develop the high powers of the Tennessee River and possibly produce a million horsepower.

Was there ever a more damnable misrepresentation of facts than that which this editorial contains? I will read that again:

The Power Trust, always wise and always awake, is terrified at the prospect of Senator NORRIS'S bill.

I am not reflecting on the Senator from Nebraska and would not do so for the world; but, as I have said many times in the debate and as the Senator himself practically said in his own speech, his bill provides for the development of power. Read it. It would build Dam No. 3, it would build the reservoirs, and it relates to the headwaters of the Tennessee River and, according to his own speech, would result in a great development of power. My bill would not do so. That is not contemplated in it—not that I object to the development of that power properly, but it is not in the legislation I propose. This editorial writer has just reversed the situation. The editorial continues:

If the United States Government is allowed to use its own electricity at Muscle Shoals to demonstrate how cheaply electricity can be sold, it would destroy the richest source of private monopoly profits in the Nation.

My bill provides that unless we can get a lease satisfactory to the President a Government corporation shall operate the plant and sell the power. This editorial writer says the President will be honest about it, and yet I put it into the hands of the President to make the lease, and if he fails to make a fair and honest lease I put it in the hands of a Government corporation to run it in the interests of the American people.

Within a year every section of the country would be proceeding with a similar public-owned hydroelectric development. Or, in anticipation of such development, the private electric light companies would be scaling their rates down to a decent level.

There is a misrepresentation of rates in my State that is attributed to the junior Senator from Nebraska [Mr. HOWELL]. It is entirely wrong, but I have talked with the junior Senator from Nebraska and he has told me that the newspaper man did not properly quote him and that later on he will correct that statement.

Mr. HOWELL. May I interrupt? I have not read the article.

Mr. UNDERWOOD. It says the horsepower in Alabama is sold for $60 per horsepower. None of it is ever sold for more than $25.

Mr. HOWELL. I have not made a statement as to what it has been sold for there, but I will make a clear statement as to what my views are respecting the situation.

Mr. UNDERWOOD. I am not objecting to what the Senator thinks or said, because he does not attribute it to me. He has a right to his own opinion. Clearly this editorial writer in writing the newspaper article got his information wrong or deliberately misrepresented when he said the Alabama Power Co. was selling electricity to the people of Alabama for $60 per horsepower. I think that is untrue.

Mr. HOWELL. Of course, the Alabama Power Co. is selling electric energy at a higher price than $60, but the Senator means on an average.

Mr. UNDERWOOD. Yes. It may be it is selling in some particular case a very small or limited quantity at such a rate, but I am talking about the sale for industrial and other purposes.

I will proceed with the editorial:

The interests behind the Underwood bill are perfectly obvious. It would be wrong to give the Muscle Shoals power away to a private power corporation under any conditions. It is a crime to give it away for such a miserable pittance as a 4 per cent rental—not 4 per cent on the entire $135,000,000 but 4 per cent only on the $45,000,000 that the Wilson Dam cost.

Mr. President, I have stated that the rental in the bill is low. I have stated that we put it low to try to induce some private citizen like Mr. Ford to make nitrogen for national defense and fertilizer for the farmers, but I also stated that that was the minimum, that the President of the United States—in whom even this editorial writer has confidence, as he says in his article—can make the price and terms of the contract whatever he wants. The minimum price is fixed in my bill and not the maximum price; and if they can find a bidder who will do the work, they can charge him twice or three times or four times the minimum price as fixed in the bill. If there is any purpose in putting this provision in the bill, it is for the purpose of seeing that the power is not given away entirely.

The Power Trust is to be given $90,000,000 outright in return for doing us the service of blocking an immediate opportunity to operate a magnificent public-owned power plant, eventually big enough to serve the entire South.

Of course, if we developed the power in the upper reaches of the Tennessee, we could probably produce and would produce a million horsepower, I think. That would be a very great horsepower, but it would not serve all the uses of the South. But the gravamen of that sentence is that the Power Trust is behind this bill of mine to make nitrogen for the farmers.

Mr. REED of Missouri. And is going to get it.

Mr. UNDERWOOD. Yes, and is going to get it; that the Power Trust is going to get it when every effort of the Power Trust has been in the direction of power, and not in the direction of making nitrogen. It is perfectly evident that the men who are interested in power realize that the bent of the United States Senate is to accept the recommendation of the President of the United States and use the power primarily for the purpose of national defense in the form of 40,000 tons of nitrogen and to serve the farmers of America, and now when they fear they can not command sufficient votes to defeat my bill which they do not want, they are trying to libel me and make the American people believe that my bill is in the interest of power and not in the interest of fertilizer for the farmers. It is simply an infamous misrepresentation by a lobby that stands without doors of the Senate Chamber at this hour. I know they are there and Senators know they are there, and we know their purpose.

Muscle Shoals is purely a power proposition.

Listen to this. Here is the confession of this editor, Mr. President. In the next sentence is where this editor pleads guilty of the charge that I have made against him. After condemning my bill and condemning me as being an instrument of the General Electric Co., when I have never had a dealing or connection with anybody that ever belonged to the General Electric Co. whatever and no consultation whatever

in regard to the terms of the bill or what I have said or what I have advocated, yet he puts me in partnership with them because I am trying to make nitrogen for defense and fertilizer for the farmer. After all that, listen to where he pleads guilty to the influences of the Power Trust himself. I do not know whether those influences were gold, dinners, or personal friendship, but here is the plea of guilt:

Muscle Shoals is purely a power proposition.

Mark you, my bill is not purely a power proposition. My bill is a national defense and fertilizer proposition, with merely the right to sell the surplus power, and this editorial writer is condemning my bill as being in partnership with the Power Trust. Yet listen now to his plea of guilt:

Muscle Shoals is purely a power proposition. All talk of making cheap fertilizer for the farmers there is pure buncombe and the Underwood bill advocates know it.

He comes down to his confession when he says this:

Muscle Shoals is purely a power proposition. All talk of making cheap fertilizer for the farmers is pure buncombe and the Underwood bill advocates know it.

I do not know it. I know that every other great civilized nation in the world is making nitrogen for national defense and selling that nitrogen to the manufacturers of fertilizers for the farmers in times of peace. We have Germany, France, England, and Japan that are all doing the same thing and doing it successfully.

This editor says that our efforts to do anything for the farmers of America at this time are "pure buncombe," and that we know it. Well, Mr. President, I do not know it. The efforts I have made in that direction are earnest and honest and I hope they will be successful. But I do know that when this paper published that article and said that the Muscle Shoals development is a pure power proposition, it admitted that it had accepted a brief from the power companies of America to try to kill my bill. That is all there is to it. They want to wipe out fertilizer, they want to wipe out national defense, and then allow some power company that is probably within their trust to absorb all the power of the Tennessee River.

The editorial goes on to say:

Secretary Weeks, said to be desirous of retiring on March 4, will be the man to give away Muscle Shoals, if it is given away. Secretary Fall, a member of President Harding's Cabinet, thus alienated the Navy's oil reserves, incomparably less valuable than 50 years' ownership of half a million electric horsepower.

President Coolidge is too wise to want another Teapot Dome in the Cabinet at Washington.

This snake that crawls through an editorial column bearing misrepresentation and slime is too cowardly to attack the President of the United States, and seeks by innuendo and charge to attack other people who are only carrying out exactly what the President of the United States has recommended. Listen to this from the message of the President of the United States delivered to the Congress during this month:

Several offers have been made for the purchase of this property. Probably none of them represent final terms. Much costly experimentation is necessary to produce commercial nitrogen. For that reason it is a field better suited—

Listen to this—

For that reason it is a field better suited to private enterprise than to Government operation.

That is exactly what my bill does and exactly what the Norris bill does not do. The President continued:

I should favor a sale of this property, or long-time lease, under rigid guaranties of commercial nitrogen production at reasonable prices for agricultural use.

The bill I introduced gives that power to the President of the United States, and yet when my bill attempts to carry out identically the terms that the President names in his message this editorial writer says:

President Coolidge is too wise to want another Teapot Dome in the Cabinet in Washington.

In other words, it is the first attack on this Republican administration since it was elected because all the power of the bill rests solely in the hands of the President of the United States.

It is in conformity with the message and desires of the President of the United States. To say that it is going to create a Teapot Dome scandal is identical with saying that if the matter shall go to the President we can not trust him, but that he will betray the confidence which the American people reposed in him when he was elected President of the United States last November.

The President even goes further than I do. I limit the lease to a term of 50 years, when the property shall come back to the Government, but the President states that it might be well to sell the property or to make a long-time lease.

Mr. President, if it were only myself, I think my character is sufficiently established among the American people to rise above the mud heaps of scandal and dirt that can be thrown at one in a newspaper whose own character is very questionable; but this goes to a great piece of legislation. Here is a charge made that legislation of a corrupt nature is sought to be passed through the Congress. I do not think the statement ought to go without challenge.

I know that there are lobbies here who are trying to get the power which may be developed at Muscle Shoals. When I say "lobbies" I mean gentlemen who represent power interests. I do not charge them with corruption or misconduct; they may have a perfect right to try to have enacted legislation that suits them so long as it is done honestly, and I do not charge them with any dishonest purpose, but that they are here trying to shape this legislation in favor of power development and utilization and not for the production of fertilizer no man who knows anything about the situation can doubt.

I think that that editorial challenging the character and integrity of one of the Members of the Senate is entitled to the consideration of the Senate of the United States, and, although I can not make the motion at this time, Mr. President, I ask unanimous consent that the charges made in that editorial may be referred by the Senate to the Judiciary Committee of the Senate, for them to report concerning the facts involved, to call this editor before them to ascertain the truth or falsity of this editorial and who is responsible for it, and the truth or falsity of the charges against me, and as to whether any man in all this broad land can be found to substantiate a single one of the charges that have been uttered in this newspaper, and, further, that the committee shall report a resolution, if necessary, authorizing them to summon witnesses and giving them the necessary power to act. I make that unanimous-consent request and ask that it may be agreed to.

The PRESIDING OFFICER (Mr. JONES of Washington in the chair). The Senate has heard the request of the Senator from Alabama. Is there objection? The Chair hears none, and it is so ordered.

Mr. UNDERWOOD. I thank the Senate.

MEMORIAL SERVICES FOR THE LATE WOODROW WILSON

Mr. CURTIS. Mr. President, in order to carry out the purposes of the concurrent resolution providing for services in the Hall of the House of Representatives on Monday next in memory of Woodrow Wilson, late President of the United States, I ask unanimous consent that when the Senate shall conclude its business to-day it take a recess until 11.50 o'clock on Monday morning.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

AMENDMENT OF NATIONAL PROHIBITION ACT

Mr. STERLING. Mr. President, I desire to call attention to calendar No. 846, being the bill (H. R. 6645) to amend the national prohibition act, to provide for a bureau of prohibition in the Treasury Department, and define its powers and duties. It is known as the Cramton bill. The bill was reported to the Senate, after a poll of the committee, at the last session on the 6th day of June, the day before final adjournment. I subsequently sent to about 75 Members of the Senate, including all the members of the Judiciary Committee, all available copies of the House hearings on the bill which I had. But, notwithstanding that, there is a disposition on the part of some of the Members to think that the bill ought to be considered in the committee, and I think probably that a point of order could be made against the bill if its consideration were moved, namely, that it had not been considered in committee. I therefore ask unanimous consent that the bill may be recommitted to the Committee on the Judiciary.

Mr. ROBINSON. Mr. President, may I ask the Senator a question?

Mr. STERLING. Certainly.

Mr. ROBINSON. Is it intended to give the parties who may be opposed to the bill an opportunity of hearing?

Mr. STERLING. It is so intended.

Mr. ROBINSON. I have no objection to the request.

Mr. FLETCHER. Mr. President, will the Senator state again what the bill is.

Mr. STERLING. It is known as the Cramton bill, being House bill 6645.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Dakota? The Chair hears none, and the bill is recommitted to the Committee on the Judiciary.

INDEMNITY ON ACCOUNT OF DEATH OF A BRITISH SUBJECT (S. DOC. NO. 172)

The PRESIDING OFFICER (Mr. JONES of Washington in the chair) laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

To the Congress of the United States:

I transmit herewith a report from the Secretary of State in relation to the claim presented by the British Government for indemnity on account of the death of Daniel Shaw Williamson, a British subject, at East St. Louis, Ill., on July 1, 1921. I recommend that Congress authorize an appropriation and that an appropriation be made to effect a settlement of this claim in accordance with the recommendation of the Secretary of State.

CALVIN COOLIDGE.

THE WHITE HOUSE,
Washington, December 13, 1924.

REPORT OF THE GOVERNOR GENERAL OF THE PHILIPPINES

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was read and referred to the Committee on Territories and Insular Possessions:

To the Congress of the United States:

As required by section 21 of the act of Congress approved August 29, 1916 (39 Stat. 545), entitled "An act to declare the purpose of the people of the United States as to the future poltical status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," I transmit herewith, for the information of the Congress, the report of the Governor General of the Philippine Islands, including the reports of the heads of the departments of the Philippine Government, for the fiscal year ended December 31, 1923.

I concur in the recommendation of the Secretary of War that this report be printed as a congressional document.

CALVIN COOLIDGE.

THE WHITE HOUSE, *December 13, 1924.*

REPORT OF THE PERRY'S VICTORY MEMORIAL COMMISSION

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on the Library:

To the Congress of the United States:

I transmit herewith the fifth annual report of the Perry's Victory Memorial Commission, dated December 1, 1924, which was submitted to the Secretary of the Interior, pursuant to section 5 of the act entitled "An act creating a commission for the maintenance, control, care, etc., of the Perry's Victory Memorial on Put in Bay Island, Lake Erie, Ohio, and for other purposes," approved March 3, 1919 (40 Stat. 1322–1324).

CALVIN COOLIDGE.

THE WHITE HOUSE, *December 13, 1924.*

MUSCLE SHOALS

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 518) to authorize and direct the Secretary of War, for national defense in time of war and for the production of fertilizers and other useful products in time of peace, to sell to Henry Ford, or a corporation to be incorporated by him, nitrate plant No. 1, at Sheffield, Ala.; nitrate plant No. 2, at Muscle Shoals, Ala.; Waco Quarry, near Russellville, Ala.; steam power plant to be located and constructed at or near Lock and Dam No. 17, on the Black Warrior River, Ala., with right of way and transmission line to nitrate plant No. 2, Muscle Shoals, Ala.; and to lease to Henry Ford, or a corporation to be incorporated by him, Dam No. 2 and Dam No. 3 (as designated in H. Doc. 1262, 64th Cong., 1st sess.), including power stations when constructed as provided herein, and for other purposes.

Mr. BROOKHART. Mr. President——

The PRESIDING OFFICER. The Senator from Nebraska is entitled to the floor. Does he yield to the Senator from Iowa?

Mr. HOWELL. I yield.

Mr. BROOKHART. Mr. President, the Senator from Nebraska has consented to yield to me a few moments while I put into the RECORD certain information in reference to the nitrate situation in Germany at this time from the supplement to Commerce Reports, dated September 29, 1924, being Trade Information Bulletin No. 207. That bulletin states:

As a result of the expansion of the air-nitrogen industry Germany found herself at the end of the war with a fixed-nitrogen producing capacity greater than her total consumption of fixed nitrogen for all purposes in 1913. Under normal conditions Chilean nitrate would have regained a part of its pre-war market in Germany, for a time at least, because of the specific demand for nitrate. In order to protect the industry, however, the German Government excluded Chilean nitrate entirely. Later, under pressure of agricultural demands and probably upon urgent requests of the Chilean nitrate interests, the ban was lifted to allow entry of a limited amount of nitrate. Meanwhile the financial crisis in Germany had come on and only a part of the allowed importation was actually accomplished. During the past few years a relatively small tonnage of Chilean nitrate has found a market in Germany, and it appears certain that even with complete stabilization of financial conditions in Germany, Chilean nitrate will never again find a large market in that country.

Mr. President, from that it appears that in spite of all the industrial development during the war it was necessary to put an absolute embargo on Chilean nitrates and to exclude them from Germany.

I now ask to have inserted in the RECORD a table in the same document showing the fixed nitrogen production in Germany in metric tons for the years 1912–13, 1915–16, 1916–17, and 1917–18, appearing on page 6 of the report. The table shows that the production increased from 122,000 tons in 1913 to 271,000 in 1918. The present capacity of the industry as developed during the war is 400,800 tons.

The PRESIDING OFFICER. In the absence of objection, the table will be printed in the RECORD.

The table referred to is as follows:

The actual production of fixed nitrogen in Germany during the war years is shown in the following table:

Fixed-nitrogen production in Germany

[In metric tons. Years ending April 30. Data from Die Stickstoffversorgung der Welt, Walter Eucken, 1921]

Produced from—	1912–13	1915–16	1916–17	1917–18
Coke and gas works	110,000	90,000	100,000	100,000
Cyanamide process	5,000	20,000	58,000	66,000
Direct synthetic ammonia	7,000	24,000	64,000	105,000
Total fixed nitrogen	122,000	134,000	222,000	271,000

Mr. BROOKHART. I also ask unanimous consent to have inserted in the RECORD a table appearing on page 7 of this report giving the details of the production capacity of the air-nitrogen industry of Germany.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Iowa? The Chair hears none, and it is so ordered.

The table referred to is as follows:

The approximate production capacity of the air-nitrogen industry in Germany at present is given in the following statement:

	Metric tons
By direct synthetic ammonia process:	
Badische Anilin- und Sodafabrick, Oppau	100,000
Ammoniawerke Merseburg, Merseburg	200,000
By cyanamide process:	
Mitteldeutsche Stickstoffwerke, Piesteritz	30,000
A. G. Für Stickstoffdünger, Knapsack	12,000
Bayrische Stickstoffwerke, Trostberg (Margaretenberg)	30,000
Lonzawerke, Waldshut	12,000
By arc process:	
Elektro-Nitrum A. G., Rhina	4,000
Elektrosaltpeterwerke, Muldenstein	2,000
By coke and gas works: Combined capacity	100,000
Total fixed nitrogen	490,000

Mr. BROOKHART. I also ask unanimous consent to insert in the RECORD the table appearing on page 8, entitled "The production of fixed nitrogen in Germany."

The PRESIDING OFFICER. Without objection, it is so ordered.

The table referred to is as follows:

Production of fixed nitrogen in Germany

[In metric tons Data from report of M. Tillier to the "Service of restitution and reparation in kind," from Industrie and Handelszeitung and other technical journals]

Produced from—	1913	1920-21	1921-22	1922-23
Coal-gas and coke works	110,000	70,000	90,000	75,000
Cyanamide plants	5,000	50,000	47,000	35,000
Synthetic ammonia plants	7,000	110,000	170,000	210,000
Total fixed nitrogen	122,000	230,000	307,000	320,000

Mr. BROOKHART. I also ask unanimous consent to have incorporated in the RECORD a table showing "The consumption of fixed nitrogen in agriculture in Germany from 1914 to 1922," appearing on page 8.

The PRESIDING OFFICER. Without objection, it is so ordered.

The table referred to is as follows:

CONSUMPTION OF FIXED NITROGEN IN GERMAN AGRICULTURE

German agriculture has long been intensive and the nitrogen consumption high. The following data on the consumption of fixed nitrogen by agriculture are quoted from Tillier's report to the "Service of restitution and reparation in kind (years ending April 30)":

	Metric tons
1914	210,000
1915	98,000
1916	73,000
1917	80,000
1918	92,000
1919	115,000
1920	159,000
1921	215,000
1922	295,000

These tonnages presumably do not include any of the nitrogen used by industry.

Mr. HOWELL. Mr. President, in opening I wish to say, in connection with whatever remarks I may make at this time, that I have the greatest respect for the senior Senator from Alabama [Mr. UNDERWOOD], and while I may not agree with him in his view of such a question as we now have before us, I do not question his motives. Moreover, I wish it understood that anything I may say with reference to the Alabama Power Co. will not be said with an idea of casting any reflection upon the senior Senator from Alabama or of suggesting that he is in any way connected with or influenced by that corporation.

Mr. President, there is no lack of production of fixed nitrogen in the United States to-day. In 1923 there were produced some 600,000 tons of ammonium sulphate, and of that amount there were exported 172,000 short tons, which brought an average of about $50 per ton. This means that fixed nitrogen in that form was produced in this country last year in excess of 34,000 tons, at a market price—not at a cost—of about 12 cents a pound.

In the substitute offered by the Senator from Alabama it is proposed to make it obligatory upon a lessee of the property at Muscle Shoals to produce 40,000 tons of fixed nitrogen.

Mr. FLETCHER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Florida?

Mr. HOWELL. Certainly.

Mr. FLETCHER. May I interrupt the Senator to inquire, if the Senator's preliminary statements are correct about the production of nitrogen in this country, what is the occasion for the large importations of Chilean nitrates into this country?

Mr. HOWELL. For use in the production of fertilizer. It has some advantages for particular kinds of fertilizer. The statistics I have given are in accord with the facts.

It is proposed, under the substitute of the senior Senator from Alabama, that the lessee of this property must produce at least 40,000 tons of fixed nitrogen. That means 80,000,000 pounds, which at 12 cents a pound equals $9,600,000.

Yesterday, it will be remembered, in response to a question put to the Senator from Alabama [Mr. UNDERWOOD], he stated that the evidence showed that fixed nitrogen might be produced at Muscle Shoals for 5 or 6 cents a pound less than the price I have stated.

Mr. UNDERWOOD. Oh, no, Mr. President.

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Alabama?

Mr. HOWELL. I do.

Mr. UNDERWOOD. If the Senator will yield, I read the testimony of certain chemists. I have their testimony here in my desk, or it is in the RECORD. In that testimony they stated that it could be produced for 5 or 6 cents—not 5 or 6 cents less, but for 5 or 6 cents. I am not a chemist. I do not know whether they are right or wrong; but some of them were eminent chemists, and that was their statement. I read it to the Senate, and it is in the RECORD.

Mr. HOWELL. Assume that they can produce fixed nitrogen for 6 cents a pound. I have pointed out that the cost of fixed nitrogen in the form of ammonium sulphate is about 12 cents a pound. That would be about 6 cents a pound more than the cost as suggested through manufacture at Muscle Shoals. Six cents a pound upon 80,000,000 pounds means $4,800,000, a sum that might be saved to the farm operators of this country, provided the lessee of this property produced 40,000 tons, and not more.

It is also provided in the substitute offered by the Senator from Alabama that the lessee shall be entitled to 8 per cent return upon the cost of production of this fixed nitrogen. If the cost of production is 6 cents a pound, 80,000,000 pounds will cost $4,800,000. Apply your 8 per cent and you will find, as all profit and royalties must be deducted from the saving sought for the farmer, that the net saving to farm operators because of this proposal for the production of nitrogen at the Muscle Shoals plants for fertilizer will be not far from $4,000,000 a year as a minimum, or an average of about 60 cents per year to each of the 6,500,000 farm operators in the United States. In short, this is what we are considering here to-day, and have been for the past week.

It may be urged that the lessee of this plant will make more than 40,000 tons of fixed nitrogen. As it has been made clear that the reason we are asked to give the Muscle Shoals plant to a lessee on such favorable terms is to grant him a bonus for making fixed nitrogen, and as the money or profit will lie in the sale of power, we can properly expect that he will make not more than the minimum fixed nitrogen required under his contract. Therefore I feel that under the circumstances I am justified in insisting that the average saving possible under this bill through the leasing of Muscle Shoals will not exceed 60 cents per annum to each of the 6,500,000 farm operators in this country.

We, it is apparent, are thinking only of fertilizer.

Mr. SIMMONS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from North Carolina?

Mr. HOWELL. I do.

Mr. SIMMONS. I am very much interested in the statements the Senator from Nebraska is making. As I understand the Senator, his argument is that the farmers of this country would get only 60 cents per capita reduction. Am I right about that?

Mr. HOWELL. Upon the basis of the premises that I have laid down.

Mr. SIMMONS. If, therefore, these operations at Muscle Shoals shall eventuate in a reduction of the price of the fertilizer produced at that plant by reason of the fact that it is demonstrated that it can be made at probably half the price of Chilean nitrogen, does not the Senator think that the nitrogen we have to buy from abroad for the use of the farmers would be likewise reduced in price, and that the farmer would not only get the benefit of the reduction upon that part of his fertilizer which he buys from the Muscle Shoals company, but he would get likewise the benefit of the reduction which would be enforced as a result of the cheaper fertilizer produced in this country upon the fertilizer which he buys other than from the Muscle Shoals company? Do I make myself clear?

Mr. HOWELL. The Senator does.

Mr. SIMMONS. In other words, Mr. President, if this fraction of our requirements of fertilizer is produced so much cheaper than we are now paying for the fertilizer which we import into this country, does the Senator think that the effect of that reduction in the price of a part of the farmer's fertilizer would force a reduction in the price of the balance of his requirements?

Mr. HOWELL. Mr. President, there is now used in this country about 200,000 tons of fixed nitrogen per annum for fertilizer purposes. If it were all reduced to 6 cents it would amount to a saving of but approximately $3 annually for each farm operator in this country; but I have no confidence that any such result would be achieved, because the interests producing and selling nitrogen are organized for the insurance of profit, and all of the saving rendered possible under such circumstances would not go to the farmer; but, understand, if all of it were reduced to 6 cents it would only amount to about $3 per annum for each farm operator in this country.

Mr. SIMMONS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska further yield to the Senator from North Carolina?

Mr. HOWELL. I do.

Mr. SIMMONS. If the reduction extends to the entire amount of pure nitrogen used by the farmers of this country, they will get their nitrogen—which is the most essential of all fertilizers—at practically one-half of what they are paying for it now. The argument of the Senator is that the present expenditure of the farmer for nitrogen is not very large, but however large it is, it is an important fertilizer; and if, as the result of the establishment of this manufacturing operation at Muscle Shoals, the farmer can get that fertilizer at one-half what he is paying for it now, we will have accomplished our purpose.

We are seeking here to reduce the price of nitrogen to the farmer—not all fertilizer, but this essential element in fertilizer—and if we reduce it one-half, whether that one-half be 60 cents or $2, we will have accomplished our object.

Mr. NORRIS. Mr. President, may I interrupt my colleague there?

The PRESIDING OFFICER. Does the Senator from Nebraska yield to his colleague?

Mr. HOWELL. I do.

Mr. NORRIS. I want to ask my colleague if, in finding out whether the farmer is going to be benefited by a reduction that might take place, it is not necessary for us to consider this fact: We always have a deficit of fertilizer. With all this addition we would still have a deficit; and therefore the people who had it could put it on the market and sell it as long as the market could absorb it—and it would, and more than they could produce here—at the same price that all the other fertilizer sells for, and therefore the farmer would not get any benefit. It would all go to the lessee.

Mr. HOWELL. Mr. President, I think it is rather a violent assumption that through the production by a lessee of 40,000 tons of fixed nitrogen we are to have a reduction of 50 per cent in the price of all the nitrogen that is sold in this country. That is the theoretical result, and we know that the promise of theory goes far beyond practical results which are usually obtained. But let us consider what we are going to pay for this saving.

Mr. SIMMONS. Mr. President, suppose, as a result of this experiment into which we are now asking the Government to go, it should be demonstrated that we can make nitrates in this country at one-half the price we are paying for Chilean nitrates; does not the Senator believe that American capital would be induced to go into the manufacture of nitrates, and supply the balance of the demand, instead of forcing the farmers of this country to pay double the price? Has not that result always followed, when it is demonstrated that we can manufacture here in the United States a product at a lower cost than it can be manufactured abroad, and there is a demand for that product? Does not the Senator know that American ingenuity and initiative and spirit in this country have always risen to the requirements of the occasion and have supplied the American markets?

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to his colleague?

Mr. HOWELL. I yield.

Mr. NORRIS. I only interrupt because the Senator from North Carolina has referred to me and my question. I only wanted to say that the provisions of the so-called Underwood substitute provide practically nothing, as I look at it, in the way of authorization for experimentation, or anything of that kind. If the Senator wants to get American ingenuity behind the production of fertilizer, to cheapen it and improve it, he will have to support the committee bill, because that provides for extensive and elaborate experimentation and investigation.

Mr. SIMMONS. All of my inquiries are predicated upon the suggestion of the Senator from Nebraska that possibly fertilizer might be produced in this country for 5 cents a pound; but the farmer would get no particular benefit. I am assuming it can be produced at that price. I am assuming that the result of these operations at Muscle Shoals will be that it will be shown that it can be produced at that price, and I am arguing that if that be true that will either bring down the price of the foreign article to the level of the price at which it can be made in this country, or American capital will go into the business and supply the demand, thereby making it unnecessary for us to make these importations from abroad at these high prices.

Mr. HOWELL. Mr. President, if the Senator believes that the United States Government should go ahead with research work and develop a method for making nitrogen at half the present cost, I agree with him; but what I object to is the turning over of this great plant to a lessee whose primary purpose will be profit and to make that profit out of the power; and that fertilizer shall be merely a secondary matter in the transaction.

Mr. SIMMONS. Mr. President, will the Senator yield to me again?

Mr. HOWELL. I yield.

Mr. SIMMONS. I am assuming that if the Government retains this plant and goes into this business itself it will demonstrate the possibility of making fertilizer at this lower price. I also assume that if it shall be leased and placed in the hands of private capital that private capital will demonstrate the same thing. I assume that if the Government retains it the Government will inaugurate research work and get the benefit of whatever may be discovered.

I am assuming that if private individuals shall take charge of this plant, with the obligation of making 40,000 tons annually for 50 years, the burden placed upon them will stimulate them, just as it would stimulate the Government, to inaugurate research work, with the view of ascertaining if they can not cheapen the manufacture of the product.

Mr. NORRIS. Mr. President——

Mr. HOWELL. I yield.

Mr. NORRIS. I only interrupt my colleague because of the assumption in the question of the Senator from North Carolina, which is a natural one. I think he said that no matter who did this, it would be to their interest to make it cheaper.

Mr. SIMMONS. To inaugurate research work.

Mr. NORRIS. I agree with that proposition. If the Government does it, however, as would happen under the committee bill, when they did discover an improvement, when they did reduce the cost of the fertilizer ingredients, the public generally would get the benefit of it. The private party who would make a bid under present conditions as a business proposition—and I am not criticizing him at all, for it would be just as a business proposition—if he could not make the fertilizer except at a loss, which I think is the fact, he would have to recoup himself out of what he made out of the power, and he would bid with the idea of losing some on the fertilizer he made and making up the loss on the profits from the power and enough other profits so that out of the whole deal he could make a profit.

Suppose he assumed that, and got the property; it would be to his interest to make the fertilizer just as cheaply as possible. Every time he reduced the cost of the manufacture of fertilizer ingredients he would be saving himself some money. But he would patent every discovery. That would be the first thing he would do, and of course the Government would not do that. Nobody else could use his process, and since after he has used the plant to its full capacity there would still be a deficiency in fertilizer, he would sell it at the same old price, the farmer getting no benefit, but he getting the benefit. That would be the natural result of that kind of a proceeding, even if he did reduce it.

Mr. SIMMONS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield further to the Senator from North Carolina?

Mr. HOWELL. I yield.

Mr. SIMMONS. The Senator is simply assuming that the great business concerns of the country do not consider the interests of their customers at all.

Mr. NORRIS. They consider themselves first.

Mr. SIMMONS. That their prices are not regulated by costs nor by the law of supply and demand.

Mr. NORRIS. Yes; I am considering that they are.

Mr. SIMMONS. I will say to the Senator that, so far as that is concerned, I am afraid there is a great deal of truth in the statement which the Senator makes. It was not through the attitude of exploitation which prevails in this country to a very alarming extent that I was addressing myself. I was simply accepting the statements of the Senator from Nebraska as to cost, and then I was assuming that the consumer would get at least some benefit from a reduction in the cost.

Mr. HOWELL. Mr. President, I have set out to demonstrate that the Muscle Shoals plants, under a lessee required to make but 40,000 tons of fixed nitrogen, would, at the maximum, on the basis of 40,000 tons of fixed nitrogen, with an assumption of a saving of one-half, as I have outlined heretofore, benefit the average farm operator in this country only to the extent of 60 cents a year.

I acknowledge that it is important to make any saving that is possible, but the question is, when we are proposing a saving, as to what that saving would cost. We are thinking about

fertilizer; the prospective lessees of this property are thinking about profit. They know that under present conditions, and under the terms of this substitute, profits from the manufacture of fixed nitrogen are very questionable. They know the situation; they are experts; and they do know that as a power proposition the possibilities of Muscle Shoals, under the conditions which exist in Alabama, Georgia, Tennessee, and Mississippi, are tremendous. Therefore, I propose now to show what this saving would cost the country if accomplished through leasing Muscle Shoals, as proposed.

In order that we may prevail upon some one to take over this property and produce 40,000 tons of fixed nitrogen a year, and assure the saving of about 60 cents, on an average, to the 6,500,000 farm operators of this country, it is to be provided that the lessee shall receive nitrate plant No. 1 at Muscle Shoals, which, exclusive of the power plant, has cost the United States Government $10,000,000. For this property the lessee is to pay not one dollar of interest in return thereon.

Mr. UNDERWOOD. Mr. President, will the Senator allow me to interrupt him just there?

Mr. HOWELL. Certainly.

Mr. UNDERWOOD. At the minimum price at which the plant can be leased, the substitute does not say that any return shall be made, but the President in making the contract may charge any reasonable amount he thinks he can get a lessee to pay.

Mr. HOWELL. Mr. President, if there is a determination to lease this property on the part not only of Congress, but on the part of the administration, which I fear exists, and we announce to the public and to prospective bidders, as is proposed, that the President is authorized to accept 4 per cent, does the Senator think they will pay more than 4 per cent? It reminds me of the story of General Grant as a boy, who was told by his father to sell a horse to his neighbor, to get $50 for it if he could, but to take $25 if he could not get more. Grant rode over and told the neighbor what his father had said, and of course got $25 for the horse.

Mr. UNDERWOOD. Mr. President, I do not like to interrupt the Senator's speech, but I want the matter made clear. If the President does not get a bid which he thinks is fair and just, he does not have to lease to anybody. He has a Government corporation organized, to which he can turn the project over on the 1st day of September, and I assume that the President of the United States is not going to make a lease that will be disadvantageous to the Government of the United Sates.

Mr. HOWELL. If the President becomes familiar with this debate, and this leasing provision shall be passed by Congress, he will understand that Congress is determined that this plant shall be leased at 4 per cent, if he can not get more than 4 per cent on the property, as stipulated in the bill. It is a matter of experience, too, that when bidders know the minimum that will be accepted—and that is what they are always trying to find out—that is what they will bid; and especially is that true in connection with public affairs. Therefore, I think I am justified in assuming that this property would be leased for 4 per cent, but, understand, not including $10,000,000 on account of this nitrate plant No. 1. No interest whatever is to be paid on that.

Again, Mr. President, we will turn over to the lessee a model town that has been developed in connection with nitrate plant No. 1 that has cost $1,800,000, but under the substitute of the Senator from Alabama not one dollar will be paid in interest upon this investment. The lessee will get this property free of charge.

Nitrate plant No. 2 will be turned over to the lessee free of charge also, and that plant, exclusive of the steam plant, has cost $56,000,000.

Again, Mr. President, there is a 5,000 horsepower modern steam electric plant at nitrate plant No. 1 which is to be turned over to the lessee. The lessee is to have it free of charge. That modern plant, in splendid condition, is to be turned over to the lessee without requiring him to provide any depreciation reserve whatever for its ultimate replacement.

The lessee will have turned over to him under this leasing proposal the steam electric plant at nitrate plant No. 2 that has a capacity now of 80,000 horsepower and that has cost the Government $12,000,000. Not only is it equipped with electric generators for the production of 80,000 horsepower, but it is equipped with boiler capacity for another 30,000 horsepower. Under the terms of the proposed substitute the lessee will not pay one dollar for the use of that plant, although the Government to-day is receiving a rental of $200,000 a year for its use. Neither would he be required to provide a depreciation reserve.

There is to be turned over to the lessee Dam No. 2, capable of affording——

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to his colleague?

Mr. HOWELL. I do.

Mr. NORRIS. I hope the Senator will not forget, if he has left the nitrate plants and is going to Dam No. 2, that at nitrate plant No. 2 there is another town, with macadamized streets and in the neighborhood of 200 modern houses that are to be turned over.

Mr. HOWELL. I appreciate my colleague's suggestion. I had left out the second model town that has been constructed by the United States Government at plant No. 2 that is to be turned over to the lessee without one dollar of return during 50 years for the use of those modern houses and buildings.

Mr. NORRIS. If the Senator will permit me to interrupt him again——

Mr. HOWELL. Certainly.

Mr. NORRIS. At Dam No. 2 there are 180 temporary houses, 15 mess halls, 32 railroad engines—although some of those may have been moved to other parts—79 box cars, 200 narrow-gauge cars, 30 miles of railroad, a waterworks system and electric-light system. There is also a waterworks system and an electric-light system at the model town at nitrate plant No. 1. The figures I gave were at Dam No. 2, but the Senator has not yet come to that.

Mr. HOWELL. I am coming to that now.

Mr. NORRIS. There are in that model town 196 model houses and there are 14 at the stone quarry. I do not think the latter are modern houses, however.

Mr. HOWELL. In addition under the leasing proposal of the Senator from Alabama there is to be turned over to the lessee Wilson Dam, known as Dam No. 2, completed so far as eight power units are concerned for the creation of 260,000 horsepower, and a switchboard in addition that has cost $1,000,000, the total property having cost about $45,000,000, and upon this property alone is the lessee expected to pay an interest return. The minimum interest return fixed in the leasing proposal is 4 per cent per annum. I have not enumerated all the property. There are 4,200 acres of land. All of this property that has cost the Government between $140,000,000 and $150,000,000 is to be turned over to a lessee at an annual minimum cost, for interest, of about $1,800,000.

Mr. SIMMONS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from North Carolina?

Mr. HOWELL. I yield.

Mr. SIMMONS. May I ask the Senator what he thinks it is worth? He is a business man.

Mr. HOWELL. I will now proceed to discuss that feature, and I will answer the Senator's question in so doing.

Mr. SIMMONS. The reason why I desired to get the Senator's answer to that question at this time was because I wished to ask him a further question.

Mr. HOWELL. If the Senator will defer his question until after I have gone into the value of the property, I shall be very glad to answer his questions if possible.

Mr. REED of Missouri. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Missouri?

Mr. HOWELL. I yield.

Mr. REED of Missouri. I am interested in what the Senator has been saying, but is not this the situation, that the bill which the Senator from Alabama has introduced authorizes the President to lease the property and leaves within the discretion of the President what he shall charge and simply provides that it shall not go below a certain point? Is not that the situation?

Mr. HOWELL. There is still a painful impression left upon my mind respecting a similar loose amendment concerning the naval oil reserves which was enacted into law by Congress and because of which a Secretary of the Navy was asked to resign.

Mr. REED of Missouri. I do not see the connection. The President had no authority under the naval oil leasing act. I am not trying to get into an argument with the Senator; I am trying to get the case stated as the truth may be for my benefit and the benefit of everyone else. Suppose it were proposed that the President should lease the property upon the most advantageous terms attainable and not a word were said

as to a minimum; would the Senator then think that the bill was necessarily fraught with either danger or fraud?

Mr. HOWELL. I should feel that such a bill were much preferable to this one, but I do not think that Congress should shirk its responsibilities in reference to the matter.

Mr. REED of Missouri. Can Congress at this time determine what kind of lease can be made? Can the Senator determine or can any of us determine what may be made possible when we sit down across the table to negotiate with men who want the property? Are we not forced to the position to say we will take the property and keep it ourselves, or that we will empower somebody to make a contract for us? Is not that about the situation in which we find ourselves?

Mr. HOWELL. This is a business proposition. Congress is but a board of directors. A board of directors for a business concern would direct its general manager to proceed with the initial steps to lease the property and report to the board of directors the best proposition he had obtained. If that were provided for, then Congress might pass upon the matter, but unless that is done I feel that Congress is shirking a part of its responsibilities.

Mr. REED of Missouri. Then the Senator would be agreeable to the pending bill or some bill of like character. I am not committed to this bill. I do not know yet whether I am going to vote for it or not. Does the Senator think that the right thing to do is when the contract is made to have it submitted to Congress for ratification?

Mr. HOWELL. Yes, sir; I think that would be the proper course to pursue.

Mr. REED of Missouri. Has the Senator prepared any amendment to that effect?

Mr. HOWELL. I have not.

Mr. SMITH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from South Carolina?

Mr. HOWELL. I yield.

Mr. SMITH. In pursuance of that suggestion the Senator means that if we are to lease, it would be the proper thing for us to have the specific terms of the lease submitted to us after the parties had gotten together and decided. But I would like to ask the Senator if he thinks that at this stage of the development at Muscle Shoals we ought to try to negotiate a lease until such time as we can develop the property and know just what are the possibilities along the line to which the Congress has dedicated it?

Mr. HOWELL. I feel that we ought to look at this matter exactly as if it were personal property, the Senator's property or my property. The plant has not as yet been completed. We do not know what can be done with it. We should not proceed to lease this property upon terms that might be far from profitable and uncertain as to results until we have had an opportunity to observe the property in operation and to know exactly what we have and may expect. Therefore, I feel that we are putting the cart before the horse in leasing this property now for 50 years. It may be that it would be well to lease the property later, but the question now is as to what is the best course to pursue, and I am simply expressing what I, as a general manager, would recommend to my board of directors.

I have outlined the character of the property it is proposed to turn over to the lessee for $1,800,000 a year; but we are not to receive that amount net, Mr. President, because we are now receiving $200,000 a year from the 80,000 horsepower steam electric plant at nitrate plant No. 2, while under the provisions of this proposed lease we are to receive nothing in return for this plant. Therefore, we are simply adding to the income of the Government from this property $1,600,000 a year, or about 3½ per cent upon the $45,000,000. In other words, understand me, we are now getting $200,000 a year for just one steam plant, which is to be thrown in and turned over to the lessee under Senator UNDERWOOD's substitute without providing that he shall pay a dollar for the use of that plant.

Furthermore, Mr. President, there is no provision in this lease as proposed in the substitute of the Senator from Alabama for maintaining depreciation reserves of the property. Each one of us knows that if we purchase an automobile and keep it in perfect repair year after year, at the end of about six years it is junk. What else do we have to do? If the automobile costs $1,200, we ought to put into a sinking fund $200 every year, so that at the end of the six years, when our automobile has become junk, we will have $1,200 with which to purchase another.

Such a fund is provided for by every public utility which is operated in this country; every public-utility commission in the country insists that the public shall contribute such depreciation funds; but no provision is made in this leasing substitute of the Senator from Alabama for setting up any such sinking-fund reserves. All the lessee needs to do is to make the 40,000 tons of fixed nitrogen. But, remember, he does not have to make any nitrogen at all for two years. He has to make 10,000 tons the third year, 20,000 tons the fourth year, 30,000 tons the fifth year, and not until the sixth year and annually thereafter is he required to make 40,000 tons of nitrogen. Under this leasing proposition he is required to produce the sixth year and thereafter 40,000 tons of fixed nitrogen and to pay $1,800,000 to the Government, or what is equivalent to $1,600,000 a year, as the Government will lose $200,000 on the steam plant, which is now leased on that basis. The lessee is also required to maintain the property in repair, but, as I have pointed out, a property may be maintained in repair as carefully as possible, yet at the end of a certain period each and every machine becomes junk, and these plants will prove no exception to the rule.

From a power standpoint, what are the potential possibilities of the property which is to be turned over to the lessee? It is possible for the plant at Muscle Shoals, Dam No. 2, in connection with the steam plant at nitrate plant No. 2, to develop 210,000 primary horsepower—that is, constant horsepower—year in and year out. However, let us call it 200,000 horsepower; let us make it even. What would it cost to develop that 200,000 horsepower by steam? It is generally recognized that in the best of plants, such as the plant here in Washington, for instance, it costs about nine-tenths of a cent per kilowatt-hour to produce electrical energy. Under very favorable conditions it might drop down to seventy-five one-hundredths of a cent. I speak of producing electrical energy by steam. What does nine-tenths of a cent mean per horsepower year? It means $59. What does three-fourths of a cent per kilowatt-hour mean per horsepower year? It means $49. Suppose we take the mean of these figures, or, say, $55 as the cost of production of electrical energy by steam; that would be about eight-tenths of a cent per kilowatt-hour. Then we will turn over to this lessee 200,000 horsepower which would cost to produce on a steam plant basis $11,000,000 a year.

But what would it cost the lessee so far as operation is concerned to maintain this power? I have obtained some figures respecting this matter from sources familiar with the situation, and it appears that to develop 200,000 primary horsepower, outside of any interest charges, would cost about $6 per horsepower per year. Add interest due to an assumed interest charge of $1,800,000 per annum and it will be found that the cost to the lessee will be $15 per horsepower, or $3,000,000 a year, while on a steam basis equivalent power would cost $11,000,000 a year. So the lessee would be getting for $3,000,000 200,000 primary horsepower that would cost to produce by steam $11,000,000.

It has been suggested here by the senior Senator from Alabama that the Alabama Power Co. or the companies operating in his State are selling power for $25 per horsepower per annum. I have here on my desk the National Electric Light Association rate book for 1924, and I find that in Bessemer and Birmingham the rate for large power, alternating current, is as follows: $1 per horsepower for demand, plus an energy charge of three-quarters of a cent per kilowatt hour. Suppose that a power user did not have to pay any demand charge whatever but had to pay three-quarters of a cent a kilowatt hour; he would be paying $49 per horsepower per annum.

Mr. UNDERWOOD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Alabama?

Mr. HOWELL. I do.

Mr. UNDERWOOD. Of course, the Senator knows that, in the first place, the Alabama Power Co. does not directly sell to the people of Birmingham. I do not know how it is in the case of Bessemer, but I do not think it is true of Bessemer. Birmingham happens to be my home. The old company was known as the Birmingham Railway, Light & Power Co., and on its reorganization, I think, it became known as the Birmingham Electric Co. That company buys its power wholesale from the Alabama Power Co. and sells to the people of Birmingham.

The contract that was made with them was made by the city commission of Birmingham. I do not know as to the terms of the contract; I had nothing to do with it, but I do know what I state to be the case. In some instances where a small amount of power is used for special demand the rates may go very high, but I state—and I make the statement on the authority of a gentleman of whom I asked the question this morning and who is very familiar with the subject of power—that $25 a horsepower would be the average

price for power that is sold there. Of course, if current is desired to operate a small machine involving only a slight consumption of power, then a fairly high price is paid, but when the power is purchased in large volume it is a very different question.

Mr. HOWELL. Mr. President, as I understand, they have a public-service commission in the State of Alabama, and its rulings would take precedence of any contract made by the city with the electric light and power company. In other words, the rates prevailing in Birmingham, Ala., I assume, are those determined by the Public Service Commission of Alabama. I should like to ask the Senator if they have a public-service commission in Alabama?

Mr. UNDERWOOD. Oh, yes; we have a public-service commission with power to regulate the rates; and I have not heard, although I am not at home a great deal, of any severe criticism of their action in regard to the regulation of rates. I know that commission has been created under the power of the legislature and has the authority, as I understand, to fix local rates on the railroads, the rates for power, and other matters of that kind.

Mr. HOWELL. Mr. President, what I wanted to make clear was that any contract made by a council with a power company is superseded by the rate schedules provided by a State public service commission or any public regulatory body. I have reason to know this, as a contract that I entered into on behalf of the Metropolitan utilities district of Omaha for power to operate ice plants was voided by the act of the city council, which in our State has the power of regulation. What I want to make clear is that if anybody is getting power in Birmingham, Ala., or in Bessemer, for $25 a horsepower, the power company is violating the rulings of the public service commission and the customer is the beneficiary of special privilege.

I have here the rate book I have referred to, and I am quoting "Large power, alternating current":

Demand charge: $1 per horsepower, plus an energy charge of seventy-five one-hundredths of a cent per kilowatt hour.

Large power off peak—

That is the cheapest kind of power—

Rate: Straight line meter, three fourths of a cent per kilowatt hour.

Or $49 per horsepower per annum.

But, to go back, I have shown here that under the minimum terms of the substitute of the Senator from Alabama it would cost the lessee about $15 per horsepower 24 hours a day per year for 200,000 primary horsepower, and that in Birmingham, Ala., and Bessemer those who use such power must pay from $49 to $59 per horsepower per year in large units; and that at $49 per horsepower this power, if all sold, would bring in $9,800,000, and at $55 per horsepower, $10,100,000. The lessee, however, would have to pay therefor but $3,000,000 per annum.

That, however, is not all. In my opinion the Alabama Power Co. or a subsidiary or an interest closely connected therewith will secure this water power; and I want to say that I have had no thought that the senior Senator from Alabama had any idea when drawing this bill that that company would secure this power. I will now state the reasons why I believe the Alabama Power Co. or one of its subsidiaries will prove the ultimate lessee of this power.

The General Electric Co. has one great subsidiary known as the Electric Bond & Share Co. That Electric Bond & Share Co. the last time I had data afforded me had 13 subsidiaries. One of those subsidiaries, if I remember rightly, is the American Light & Power Co., which, in turn, has 192 subsidiaries. One of these 192 subsidiaries is the Nebraska Power Co., which serves the city of Omaha. Besides this American Light & Power Co., which two years ago had 192 subsidiaries, there are 12 other subsidiaries of the Electric Bond & Share Co., and one of those subsidiaries is the Alabama Power Co. In other words, the electric light and power business in this country is largely tied up and in the hands of one great interest. It practically controls the business.

The Alabama Power Co., which is really the General Electric Co., first located the site for building a dam where the Wilson Dam, or Dam No. 2, is now constructed. It acquired the site and lands adjacent thereto. As the construction of what is now known as Dam No. 2 involved the expenditure of a very large sum of money, the company said to the United States Government in 1916:

If you will build this dam, we will present you with this site and the land adjacent thereto for the sum of $1.

The United States Government accepted this offer and proceeded to build this dam, and in addition, as I have pointed out, installed 85,000 steam electric horsepower. Since that time the Alabama Power Co. has leased from the Government the steam electric power plant at nitrate plant No. 2, developing 80,000 horsepower, with boiler and power-house capacity for 120,000 horsepower; and that company is now paying for the use of that plant some $200,000 a year. It now has a transmission line leading from that plant to aid in supplying all the territory covered by the transmission lines of the Alabama Power Co.

In the meantime the Alabama Power Co. has been developing water power on the Tallapoosa River. This water power will be completed within one year of the time of the completion of this lease if it is made; that is, in 1926. This power will develop 85,000 primary horsepower; so there will be 85,000 primary horsepower on the Tallapoosa River and 200,000 primary horsepower available at Muscle Shoals, including the steam plant at nitrate plant No. 2.

Now, mark you, the vice president of the Alabama Power Co. has stated that if the water power and steam plants at Muscle Shoals were operated in conjunction with and supplemental to the power development on the Tallapoosa River the primary horsepower available would not be merely the sum of the primary power at Muscle Shoals and the Tallapoosa River, which would be 285,000 horsepower, but that amount plus 75 per cent of the 285,000 horsepower. What does this amount to? Four hundred and ninety-nine thousand horsepower. In other words, the Alabama Power Co. is developing the Tallapoosa watershed for the 85,000 primary horsepower that will be available when the power is completed; and now if it secures the Muscle Shoals plants, it will secure the equivalent of 414,000 horsepower additional, at what cost? At a cost of approximately $3,000,000 a year—$1,800,000 paid the Government at 4 per cent interest and $6 per horsepower developed.

What will that mean per horsepower per annum? About $7.50 per horsepower. I wish to say here that I have never visited Muscle Shoals or the watershed of the Tallapoosa River. I am merely making these deductions from the testimony afforded the Agricultural Committee.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to his colleague?

Mr. HOWELL. I do.

Mr. NORRIS. Perhaps the Senator is going to elaborate the matter he has just mentioned, but I thought he was getting from it. I think the Senator ought to explain to the Senate just how the Alabama Power Co. would get this additional horsepower. The Senator has been talking about primary power all the time, and Senators may not understand how they can get, apparantly out of the air, so much additional horsepower by the combination of these two systems.

Mr. HOWELL. Mr. President, we have on the Tennessee watershed 200,000 primary horsepower. We have on the Tallapoosa watershed 85,000 primary horsepower. The stages of water prevailing in these two watersheds are not identical at the same time, so that it is possible to combine considerable secondary power available in each watershed so as to become virtually primary power and thus increase the total of the primary power of the two developments. In other words, tying these two powers together will mean that the Alabama Power Co. itself, or by an arrangement through a subsidiary or another interest, will be able to add to its power resources 414,000 primary horsepower by the acquisition of Muscle Shoals, not merely 200,000 primary horsepower.

What would it cost to develop that power by steam? Suppose we consider 8 mills per kilowatt hour as the cost, or about $55 per horsepower per annum. I do not mean to say that they could sell all that power at once—of course, a market therefor would have to be developed—but if they could do so at $55 per horsepower they would have an income from that 414,000 horsepower of more than $22,000,000 a year. I am going to these limits so that Senators may understand the possibilities of the situation that exists at Muscle Shoals, in that region so favorable to the development of water power.

Mr. President, the possibilities are so tremendous that if this Congress deeds away this great power, the greatest one outside of Niagara Falls east of the Mississippi River, for a pittance, that action, I believe, will some day be called the crime of the Sixty-eighth Congress.

We have been considering what we could do for the farmer by leasing this great power, and I have shown that if this 40,000 tons of fixed nitrogen is produced at 6 cents a pound,

the probable saving, on the basis of ammonium sulphate, would be but $4,000,000 a year to the farmers of this country, so far as this 40,000 tons of nitrogen is concerned, or about 6¢ cents per annum per farm operator in the United States.

It might be urged that, in addition, with this great power in the hands of a strong power company, the citizens of Alabama, Georgia, Mississippi, and Tennessee might secure cheaper electrical energy. Let us consider what the results of the development of water power under private ownership have been for the people of this country thus far. That I may make it clear, I am going to point out what has been accomplished for some communities in the United States in the reduction of the cost of electrical energy through public competition, or threatened public competition.

Some 10 years ago Mr. Baker, afterwards Secretary of War, was the mayor of Cleveland, and he developed a publicly owned electric light plant, which now supplies about one-third of the electric energy used in Cleveland, and the maximum rate from that time down to the present has been 3 cents a kilowatt hour, and the enterprise has been a success, not only in the matter of service but financially also.

At the time this plant was established, another subsidiary of the General Electric was supplying the city of Cleveland with light and power. They were charging the people at that time, as I remember, about 12 cents a kilowatt hour. Subsequently the Public Service Commission of Ohio fixed the maximum rate at 10 cents a kilowatt hour, but consumers on the lines of the private company naturally resented the rate charged and appealed to the court, upon the ground that the rate fixed by the Public Service Commission of Ohio was unreasonable. Notwithstanding the great difference in the rates charged by the two plants the courts upheld the 10-cent rate, but by that time the financial success of the publicly owned plant had become so patent that the private company reduced its rate voluntarily to 5 cents a kilowatt hour, and that has since been the rate in the city of Cleveland, notwithstanding, mind you, that the energy is produced by steam, and it costs about nine-tenths of a cent a kilowatt hour to produce it, as I found when in Cleveland last June.

Let us determine what 40 kilowatts a month costs in the city of Cleveland. I am using 40 kilowatts as an example, because I noted that for the months of August and September last summer our apartment used about 51 kilowatts a month. However, I shall adopt as my standard 40 kilowatts per month. The publicly owned plant in Cleveland supplies 40 kilowatts a month to small consumers for $1.20. The private company supplies 40 kilowatts a month for $2. It might be suggested there was some peculiar reason why this development has taken place in Cleveland. The only peculiarity is public competition and the threatened extension of the publicly owned plant.

I am asked how large a house 40 kilowatts would light. Our apartment has seven rooms, and we used about 51 kilowatts per month during the summer months and all for lighting.

I am also asked by the Senator from Iowa [Mr. BROOKHART] as to what the rate is here in Washington. It is outrageous. We pay 10 cents a kilowatt hour, with no discount. Forty kilowatts in Cleveland cost $1.20, and we pay $4 for that amount of electrical energy here in Washington.

Congress ought to be ashamed of itself. For what the private company charges $2 in Cleveland, in Washington we pay $4, a hundred per cent more. Let me again call attention to the fact that there is nothing peculiar about the situation in Cleveland except public competition, and wherever public competition is seriously threatened similar results follow.

To illustrate this fact let me refer to my own State. In the city of Lincoln, which has a population of about 58,000 people, there is a private lighting plant and the rate for 40 kilowatts a month, net bill, is $2.10. Why do they get that rate from a private company? Because there is a public plant that lights part of the city.

Mr. BALL. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Delaware?

Mr. HOWELL. I yield.

Mr. BALL. In order that the Senator may be perfectly fair with the Public Utilities Commission of Washington, I think it is proper for him to state that the public utilities fixed a rate of 8 cents and not 10 cents, but the user does pay 10 cents a kilowatt. The 2 cents now is impounded until the courts shall render a decision as to the valuation of the properties. The public utilities commission has reduced the rate; they did so probably two years ago.

Mr. HOWELL. Mr. President, I was not familiar with that fact, and I thank the Senator from Delaware for giving me the information. I do want to say this, however, that even 8 cents is an outrageous price in the city of Washington, because, as I pointed out, in Lincoln, Nebr., a city of 58,000 inhabitants, a private company supplies 40 kilowatts for $2.10, and the electrical energy used in Lincoln is produced by steam from slack that comes from the Kansas district and costs about $5 a ton.

If you will compare the rate, for instance, in Lincoln, Nebr., with the rate here, you will find that we pay 90 per cent more in Washington for 40 kilowatt hours of electricity, in a city of 480,000 inhabitants, than the people in the city of Lincoln pay, with only 58,000 inhabitants. Why is this? It is because in Lincoln they have a publicly owned plant which supplies a part of the city, just as they have in Cleveland.

Mr. President, with the example of Cleveland and with the example of Lincoln, we proceeded to secure a reduction of rates in the city of Omaha, a city of 200,000 inhabitants.

In 1912 we took over the water plant in Omaha and immediately discussed the question of combining an electric plant therewith. The rate of the private lighting company immediately dropped from 14 cents a kilowatt hour to 12 cents. That was in the piping times of peace, in 1912. We put in a small plant in connection with the water plant in Omaha and found that we could place the energy at that time, 1913, upon the switchboard at three-quarters of a cent per kilowatt hour. The fact was announced. We further announced that we would go to the legislature and ask for authority to extend the plant into the city, and within a month another reduction of 1 cent per kilowatt hour was announced, bringing the rate down to 11 cents per kilowatt hour. Notwithstanding we went to the legislature and merely asked authority for the people to vote upon the question of issuing bonds to build a competing light plant. The bill passed both houses, but the governor of the State saw fit to veto the bill; but they knew that they had had a fight, and almost immediately the rate came down to 8½ cents per kilowatt hour. Two years later they thought we were preparing to go to the legislature and again ask for such authority. The day before the legislature convened the rate again came down, this time to 6 cents a kilowatt hour. That was January 1, 1917, right in the midst of war; and since then the rate has been further reduced to 5½ cents per kilowatt hour, not because of public competition but because of threatened competition.

Mr. BALL. Mr. President——

The PRESIDING OFFICER (Mr. WILLIS in the chair). Does the Senator from Nebraska yield to the Senator from Delaware?

Mr. HOWELL. I yield.

Mr. BALL. I would like to inquire of the Senator whether the rates given are for the small users for the purpose of residence lighting, or are they for large industrial users where they use large quantities?

Mr. HOWELL. I am making a comparison on the basis of 40 kilowatt hours per month and will take up the large power users later.

Here we have three cities with either public competition or threatened public competition, with the result that 40 kilowatt hours from coal cost as follows: In Cleveland, $1.20 from the public plant, $2 from the privately owned plant. In the city of Omaha 40 kilowatt hours cost $2.20; in Lincoln, Nebr., 40 kilowatt hours cost $2.10, both cities being supplied by privately owned plants.

In each case the power is made by steam. These rates are compensatory, and to show what it means let us consider, for instance, the city of Cleveland. It has at least 160,000 consumers. At 10 cents per kilowatt in Cleveland, 40 kilowatt hours used to cost $4 and now cost $2. Suppose consumers do not save $2 in Cleveland, but only $1. This saving would amount to $160,000 a month. Multiply that by 12 and we have nearly $2,000,000. Do Senators see what public competition has done for the people of Cleveland? Do Senators see what public competition could do for the people of the country? And yet we are talking about trying to save the farmers 60 cents a year on fertilizer. What might be saved on light and power?

What are the rates afforded electric-energy users in those communities that are supplied by water power under private ownership? Let us consider Niagara Falls, N. Y. There, in the shadow of the great cataract, is probably the cheapest hydroelectric energy in the world, certainly in this country. They have a private plant there, and 40 kilowatt hours per month in the city of Niagara Falls costs $2.26, or 88 per cent more than the same amount costs in Cleveland from the publicly owned plant.

Consider the city of Burlington, Iowa, supplied from the Keokuk Dam. The rate for 40 kilowatts per month is $3.24.

These are all net rates. That is 168 per cent more than from the Cleveland public plant, 62 per cent more than from the Cleveland private plant, and 54 per cent more than from the Lincoln private plant.

Mr. BROOKHART. Mr. President, I would like to ask the Senator if he is certain that the power in Burlington is furnished by the Keokuk water power, or is it steam power?

Mr. HOWELL. It is water power.

Mr. BROOKHART. I presume it is. Does the Senator's data show whether it is from the Keokuk Dam or not?

Mr. HOWELL. It states that the power is purchased. In all these municipal plants where they are purchasing hydroelectric energy they are maintaining the old steam plants as auxiliaries.

Now let us go to Quincy, Ill., supplied by water power privately owned. There the rate is $3.05, 150 per cent more than the Cleveland public plant, 53 per cent more than the Cleveland private plant, and 45 per cent more than the Lincoln private plant.

How about the State of Alabama, where water power has been developed to a wonderful degree and where the possibilities for water power are extremely favorable? What do we find in the cities of Bessemer, Birmingham, and Montgomery, Ala.? We find that private plants supply energy from water power at a cost of $3.06 for 40 kilowatt hours. How does this compare? It is 155 per cent more than the same would cost from the Cleveland public plant, 53 per cent more than the same energy costs from the Cleveland private plant, and 45 per cent more than the same would cost from the Lincoln private plant. That is the State of Alabama.

Let us consider now the State of Georgia. Atlanta has a population of 222,000. The energy is secured from a private plant supplied by water power. The net bill for 40 kilowatt hours is $3.24 or 166 per cent more than from the Cleveland public plant, 62 per cent more than from the Cleveland private plant, and 54 per cent more than from the Lincoln private plant.

In Augusta, Ga., a private plant obtains energy from water power. There the rate is $3.60 net for 40 kilowatt hours. That is 200 per cent more than from the Cleveland public plant, 80 per cent more than from the Cleveland private plant, and 72 per cent more than from the Lincoln private plant.

They have no water power supplying Meridian and Jackson, Miss., but we find that in Meridian 40 kilowatts cost $4.56, or 280 per cent more than from the Cleveland public plant, 128 per cent more than the Cleveland privately owned plant, and 112 per cent more than the privately owned plant in Lincoln.

In Jackson, Miss., we find that the bill for 40 kilowatt hours is 400 per cent more than from the Cleveland public plant, 200 per cent more than from the Cleveland private plant, and 186 per cent more than from the Lincoln private plant.

Mr. OVERMAN. Has the Senator the figures from North Carolina?

Mr. HOWELL. I regret to say that I have not made up the figures for North Carolina.

Mr. McKELLAR. Mr. President, I was out for a few minutes. Has the Senator the figures from Tennessee?

Mr. HOWELL. I have. In Nashville, Tenn., there is a private steam plant, and the rate is $4.04 for 40 kilowatt hours, 236 per cent more than from the Cleveland publicly owned plant, 102 per cent more than from the Cleveland privately owned plant, and 90 per cent more than from the Lincoln privately owned plant.

In Knoxville, Tenn., with a population of 89,000 and a privately owned water-power plant, the rate is $3.96 per 40 kilowatt hours, or 230 per cent more than from the Cleveland public plant, 98 per cent more than from the Cleveland private plant, and 89 per cent more than from the Lincoln private plant.

Mr. President, this gives a very fair view of the electric light and power situation in the United States to-day. The people of the country through the power of habit are paying extravagant prices wherever they have not had the energy to rise up and demand reasonable rates, and then, if they did not get them, to take the bull by the horns and build their own plant.

Mr. McKELLAR. Mr. President——

Mr. HOWELL. I yield to the Senator from Tennessee.

Mr. McKELLAR. If the Government were to operate this plant and sell the surplus power, Tennessee being in close proximity to the plant, does the Senator know of any reason why municipalities, or even private concerns, might not build transmission lines and sell the power or current in the cities of Knoxville, Nashville, Chattanooga, and so forth, at a much lower price than is now being paid in those cities? What is the Senator's view about that subject?

Mr. HOWELL. There has arisen a method of manipulation of the electric light and power situation about as follows: The Alabama Power Co. supplies wholesale power and is a subsidiary of the General Electric Co. The General Electric Co. may have in the State of Alabama another subsidiary that owns the distribution lines. The General Electric Co., through its Alabama Power Co. subsidiaries, probably sells power wholesale and makes a profit from its Birmingham subsidiary, and then the Birmingham subsidiary sells it for enough more to enable it to make another handsome profit.

Do Senators see how they milk the consumers? The people of this country will obtain no benefit from hydroelectric power in private hands. Why? Suppose it costs, as it does, about nine-tenths of a cent per kilowatt hour to make electrical energy by steam and that a hydroelectric plant can produce it for four-tenths of a cent. The difference is five-tenths of a cent. Suppose there is given to a community the advantage of that whole five-tenths of a cent—as, for instance, Washington, when hydroelectric power is developed here—what is the result? If the electric light and power company has its way, the people will get the service for 9.6 cents instead of 10 cents.

The determining factor is not the cost of the primary power; it is the cost of distribution. That is where these companies secure their exorbitant profits. The only way they can be regulated is by public competition or the threat of public competition. That is why it seems to me it would be a crime for Congress to alienate the great water-power plant at Muscle Shoals, which has possibilities, through its potentialities of various kinds, of reducing electric-light rates throughout the contiguous States and ultimately of affecting electric-light rates throughout the Nation.

Mr. BALL. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Delaware?

Mr. HOWELL. Yes.

Mr. BALL. Mr. President, the figures given are most interesting, but it would be of great service if we could only have in connection with those figures the amount of taxes which are paid by the privately owned corporations into the State or municipal treasury. Of course publicly owned corporations pay no taxes.

In order to get at the real cost of distribution it would be necessary to add to all other expenses the amount of taxes which are paid; then the difference between that sum and the expenses of the publicly owned utilities would give us the exact condition.

Mr. HOWELL. Mr. President, as Senators will note, I have only quoted in this comparison figures relative to one publicly owned plant, but have made a comparison of the Cleveland privately owned plants, which pays taxes, with the Lincoln privately owned plant, which also pays taxes.

I wish to say, further, that the Cleveland publicly owned plant sets aside every year and places in the hands of the treasurer as a sinking fund an amount equal to the taxes it would pay if privately owned.

Mr. BALL. Mr. President, the point at issue is this: Each State or each municipality has its own method of taxation. What Cleveland, Ohio, may tax its public utilities and what some other city may tax its public utilities may be very different propositions. I should like, if possible, to get the actual figures. Some cities tax their public utilities very severely, while others impose comparatively light taxation. Not only does the taxation on electric lights, but on railways, differ in each city. If we could get those figures, they would probably be of great benefit.

If the Senator will permit me, I will say that in my own city of Wilmington, Del., the charge is 10 cents per kilowatt for such distribution as that to which the Senator is referring, and yet I know that the company will supply electric power for other purposes where a large amount is used as low as three-fourths of a cent per kilowatt.

Mr. BROOKHART. Is not that to subsidiary companies or to interlocking directorate companies, which they are favoring?

Mr. BALL. I think not.

Mr. BROOKHART. And that amounts to a discrimination against the public, and a very severe one.

Mr. BALL. I have never made a careful investigation as to the cost of distribution, but rates there, I think, are no greater than those charged in other cities of like size.

Mr. HOWELL. Mr. President, I am very much pleased that the Senator from Delaware should have brought up this matter. I have quoted figures relative to the city of Omaha. I have here the rate sheet which states that the demand charge there for the first 200 horsepower is $1.10. Senators

will remember that in Birmingham it is $1 for total demand, while in Omaha it is $1.10 for the first 200 horsepower; 90 cents for the next 200 horsepower; 70 cents for the next 200 horsepower; 50 cents for the next 200 horsepower; and 30 cents for all additional horsepower.

As to the energy charge, for the first 10,000 kilowatts it is 1.4 cents; for the next, 15,000 kilowatts, it is nine-tenths of a cent—that is, it is, as I remember, about $50 for the first 25 kilowatts. After that it is seven-tenths of a cent.

The rate for power in Omaha, where they are only charging the people of that city $2.20 for 40 kilowatts a month, is as low as it is in Birmingham, where they have water power and are not compelled to develop power by steam.

What I want to make clear is this: It may be possible to save 6,500,000 farmers in the United States 60 cents a year on 40,000 tons of fixed nitrogen under the terms of the pending substitute, or because of it, but that will stop the opportunity of relieving this country, including the farmers, of hundreds of millions of dollars of excess charges for electrical energy.

We have in our hands this great power, a talisman that can make possible a reduction of rates over a large section of this country by actual competition, if necessary, and elsewhere by potential competition and example.

Mr. President, with these possibilities before us, I feel that if Congress alienates for 50 years this unfathomed mine of wealth at Muscle Shoals, this great source of possible relief to our people, the time will come when the act will be looked upon as the crime of the Sixty-eighth Congress.

The PRESIDING OFFICER. The question is on the amendment of the Senator from South Carolina [Mr. SMITH] to the amendment of the Senator from Alabama [Mr. UNDERWOOD]. The yeas and nays have been ordered, and the Secretary will call the roll.

Mr. NORRIS. Mr. President, I do not care to delay the vote on the amendment to the amendment. I should like to vote to-day; but there are a number of Senators who have gone away under the impression that there would not be any vote taken to-day. I should like to inquire of the Senator from South Carolina as to his view.

Mr. SMITH. Mr. President, of course I should like to expedite this matter just as much as possible. I do not want to delay it for any reason in the world except for proper discussion, but there are quite a number of Senators absent now who have gone away under the impression that a vote on this amendment would not be taken before Monday. So far as I am individually concerned, if it may be done without adding unnecessarily to the delay of this proposed legislation, I should prefer that the pending question go over until Monday because at that time we will have a better opportunity to secure an expression from all those who are interested in this subject. Had not the impression gone forth that a vote on this amendment would probably not be reached to-day I should welcome a vote at this time. Of course, however, I have no control over it; but I would prefer, under the circumstances, if possible to wait until Monday before taking a vote.

Mr. UNDERWOOD. Mr. President, of course I do not know who has given out any indication that at half past 3 in the afternoon we are not going to vote on the pending amendment. Such a suggestion certainly has not come from me, and I do not suppose it has come from the leader on the other side of the Senate; I am sure it has not.

This bill has now been before the Senate for 10 days. The pending amendment is only one of many amendments to the bill. It has been discussed fully by the Senator from South Carolina, and, if he desires to discuss it further, I have no objection in the world to his doing so. It has been discussed by the chairman of the committee; it has been discussed by myself. It has been here for two days; full opportunity to debate the amendment has been afforded, and, unless we intend to go on blocking legislative business, I think the vote should be taken.

I have no desire for the pending amendment not to be fully and completely discussed, but there is legislation of vast importance waiting to be brought before the Senate. There are Senators on the floor who have been trying for the last week to secure consideration of the veto message of the President on a bill providing increased compensation for the letter carriers of America, but they are unable to do so because of the bill which is now before the Senate. There is also an order providing for the consideration of a most important matter which has been pending for some time. If we shall continue for a few days longer merely dragging the time away, it means that there will be no legislation before the Christmas holidays except this bill.

I have not raised my voice against any debate. As long as any Senator wants to stay in his place and debate this bill I have no objection. That is in accordance with the rules of the Senate, and he is entitled to do so; but when those who are not favorable to it want to ask for an adjournment at 3 o'clock simply because some Senator has gone away, while I do not know whether those who went away are favorable or unfavorable to the bill that I proposed, I do know that we will not complete this legislation unless we are willing to attend to the business of the public. Further than that, I know that we will not take up the bill on Monday, because on Monday we have a memorial service for the late President Wilson, and I have no doubt that at the conclusion of the memorial service both the Senate and the House will adjourn out of respect to the late President; so these gentlemen are merely inviting the postponement of this vote until next Tuesday, and then probably a further postponement will be suggested. I do not know whether it is merely an effort to delay this bill or whether it is an effort to use this bill as a bumper to prevent other legislation from being considered; but I do think that with this matter pending we should have a vote.

Mr. CURTIS. Mr. President, I hope we shall have a vote on this amendment this afternoon. As the Senator has said, it is not likely that any work will be done on Monday. It is only half past 3, and we can very easily get through with this amendment this afternoon unless there are other Senators who desire to speak; and I hope we shall have a vote on it.

Mr. McKELLAR. Mr. President, I think we should have a quorum present, and I therefore suggest the absence of a quorum.

Mr. NORRIS. Mr. President, before the Senator makes that suggestion——

Mr. McKELLAR. I will withdraw it for the moment.

Mr. NORRIS. I do not want to let pass without notice any insinuation here that anybody is trying to block anything. I do not believe anybody is. I expected that we would have a final vote on this bill before this time, but I want to be fair. I think we all ought to be. We never have had a bill before the Senate at any time where the debate has been more completely confined to the questions connected with the bill. Nobody has been filibustering here.

I wish we could have gotten through before. I should be glad to get through to-night if we could; but, to be fair and honest with my fellow Senators I must say that nobody has undertaken to debate this bill unless he has talked directly to the point. Those who have spoken have not agreed with me a great many times, but the debate has been an honest, fair, and open one, and there has been no indication that anybody was trying to filibuster.

I should be glad to take up the veto message myself. Personally I should be willing to ask unanimous consent to lay aside this measure and take up the veto message, because I do not think that will take long; but I know that request would not be granted. I regret that anyone should even insinuate that there is intentional delay. The Senator from Alabama says, "What is the use of adjourning at 3 o'clock?," looking right at the clock, when the clock says 25 minutes to 4, leaving the impression that somebody here is not acting in good faith in trying to expedite this matter.

I want to say, Mr. President, that I should be glad to commence earlier and work later, and perhaps we shall have to do that. For one, I should be insisting on that if there were anything here to indicate that anybody is trying to filibuster or unreasonably delay action by the Senate. I do not believe such an insinuation ought to go, and I am not myself going to permit it to go, without some attention being called to it.

I am perfectly willing to vote on this amendment now. To my mind it is not of as great importance as some others; but I am going to be influenced somewhat by the wish and the will of the Senator who has proposed the amendment. If he is willing to vote, I am.

Mr. McKELLAR. Mr. President, in addition to what has just been so well said by the Senator from Nebraska, I might suggest that I think quite as much time has been taken upon one side of the bill as upon the other. It has been very generally debated on both sides. I think most Senators have confined themselves very closely to the subject, and I think the debate has done a wonderful lot of good.

I withhold my suggestion of the absence of a quorum still further for a moment.

Mr. SMITH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from South Carolina?

Mr. McKELLAR. I do.

Mr. SMITH. As the Senator from Nebraska [Mr. NORRIS] has said, and as doubtless the Senator from Alabama [Mr. UNDERWOOD] will confirm, this debate has been devoted entirely to the matter at issue. Every angle of it that appealed to the

different Senators has been discussed with reference to the main proposition.

In my opinion the question of what we propose to do with this project at Muscle Shoals is perhaps of greater importance than any other question that is going to come before the Senate at this session. It involves more than the mere outlay of the amount of money we have put in Muscle Shoals. Its relation to agriculture and to the national defense are matters of the most vital importance. The mere fact that war is not going on now is no reason why we should assume the rôle of the Arkansas traveler, who when it was raining could not shingle his house and when it was not raining he did not need the shingles.

The fact of the matter is that in the last analysis we are dependent upon a foreign source for our national defense. That was made painfully evident during the World War. Here is a proposition as to which we are reasonably assured by the scientists that if it is developed along the lines that the legislation intended should be followed will give, as improved methods are discovered and installed, all the basis of explosives we need; and along with that, pari passu with that, the very ingredient that is used as an explosive to defend the country is the prime element that is needed to produce the food that supports the country. Perhaps there is not in all the line of chemistry such a condition as that.

Now, we are called upon here to decide whether we are going to turn over this project to private interests under certain restrictions, or whether the Government is going to carry on, for the two prime concerns of the Government, the two things that are most vital to the Government—its defense in time of war and adequate physical support in time of peace. We have every reason to believe that we can develop at Muscle Shoals processes by which the entire amount of power produced within that territory, if economically utilized, may solve both problems.

This is not a mere academic discussion as to whether we shall adopt the proposition of the Senator from Alabama and leave with the Secretary of War the determination of the question as to whether that power shall be given to a private individual, that power being delegated to him, or whether we shall carry it on in connection with the most vital question that ever affected this Government. Shall we develop at Muscle Shoals sufficient processes to guarantee us in time of war an adequate supply of that which would defend us, and in times of peace an adequate amount of that which is essential for the fertilization of our soil?

It is not so much a quantitative question right now as it is a qualitative question. What can we do there to develop the process, and make sure and certain what we may do in the way of solving the two great, vital problems of any nation or country in the world—the enrichment of its soil and the protection of the people during times of war?

Therefore, there are some of us who believe that this question is of such vital importance that we ought to take all the time that is necessary so that Senators can decide without reference to party, without reference to any partisan feeling or sectional feeling, what we are going to do with a great national asset. The fact that it happens to be in Alabama does not mean that it is any less an asset of the United States of America. It is a gift to this country by the creative force that we ought to use for all the country.

I have said that this proposition of mine, which I have offered as an amendment to the bill of the Senator from Alabama, is the dividing line. It will bring sharply to issue the question as to whether we are going to delegate to private individuals the vital interests of this country, whether we are going to leave the defense of this country in the hands of private individuals to develop exigently as their personal interests may dictate, or whether the Government shall hold this great national asset and drive to one objective, which is the development of a process of using that power so that there will be no question as to adequate amount and adequate processes of national defense.

We have that question to decide here—whether we are going to delegate the ultimate defense of this country to private interests with a pitiful 40,000 tons of nitrogen annually, or whether we are going to determine whether or not we can produce at this plant a million tons annually if the Government requires it to defend itself. That is the question.

Nobody knows what is going to be the ultimate perfection of the process of fixing nitrogen from the air. We do know that the amount in the air is infinite, and that it is only a question of whether the ingenuity of our people will be able to perfect a process by which the vast amount of this ingredient necessary to protect our country may be fixed and used for our defense. It is not good statemanship, it is not patriotic, because dollars and cents are involved and it may redound to the enrichment of some companies, for us to turn this plant loose until we have assured the American people that the appropriation which was made to prove beyond cavil that we can get the ingredient necessary to defend ourselves has accomplished its purpose.

That is the question for us to decide.

It is not a question of a water-power company, and it is not alone a question of fertilization of the soil. It is a question of settling whether within our own domain we can develop and produce that which will protect us in time of need, in time of war.

Because of this fact that this is perhaps the most vital question that ever came before this body, I have suggested that my amendment marks the dividing point as to whether we are going, as the representatives of the people, to develop what we have begun to a point where we will demonstrate and perfect processes by which we can be independent of any foreign country for the basic elements of our defense, and know that we have not only the process but the power to make the process effective, or whether we are going to dedicate this great asset to use either as a power plant or as a semipower plant, and leave the country in doubt as to whether in time of war it can get an adequate supply of this absolutely indispensable ingredient.

It can not be considered a question of North, South, East, or West. It is a national question as to what we are going to do, whether we will produce, by our own ingenuity, that which we so vitally need, or whether we will depend upon Chile. It is up to us to decide that question, and in the amendment I have offered to the proposition of the Senator from Alabama is the sharp issue of whether we are going to leave the question of national defense to the very questionable attitude of a private corporation, or whether we, as the people charged with that responsibility, shall carry on.

As I said a moment ago, there are some who are interested in this as much as I am sure we all are, who were called away, and thought, perhaps, a vote would not be taken until Monday, and I would like to have them here. I am not trying to delay——

Mr. HARRISON. May I ask the Senator a question?

The PRESIDENT pro tempore. Does the Senator from South Carolina yield to the Senator from Mississippi?

Mr. SMITH. I yield.

Mr. HARRISON. Does the Senator think it is fair to those of us who stay here, expecting a vote every minute of the day, that others should be encouraged to leave the Senate? Is that just right to those of us who stay here all the time?

Mr. SMITH. It is not worth while for the Senator from Mississippi to ask me any such question.

Mr. HARRISON. It is pretty hard to answer that question.

Mr. SMITH. It is not hard to answer. The Senator knows it is one of the commonest things that occurs here in the Senate, that where there is not undue delay, certain courtesies are extended. It is done all the time, and the attitude of the Senator on a question sometimes largely determines whether he thinks that is a proper extension of courtesy or not. The Senator from Mississippi knows that as well as I do, and he knows it is a thing that is done every year.

Mr. HARRISON. If the Senator has made that kind of an agreement with somebody who has left, does he not think it would be fair to the rest of us to let us know whether we can leave, too, and enjoy ourselves?

Mr. SMITH. I have made an agreement with no one, and the Senator from Mississippi is begging the question when he intimates that I have done so. I simply heard it said that Senators were called away, thinking that perhaps on account of the importance of the question we would not reach a vote until Monday. No great delay would be occasioned if we were to postpone the vote until Tuesday, because, even if the Underwood substitute is agreed to, the Senator from Nebraska doubtless will offer his amendment, and debate will come then on the question as to the features involved in the Underwood substitute.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. CURTIS. I ask the Senator if, in case we recess after having a short executive session, he would agree that all debate be considered as closed on this particular amendment and that we vote on it when we meet Tuesday morning at 12 o'clock?

Mr. SMITH. I do not know whether others care to debate it or not, but so far as I am concerned I have said all I care to say on the subject. The matter is so plain to me, our duty is so manifest, that there is no question in my mind as to what

we ought to do. If it had been a pure question of a commercial project for making a profit, I do not know that I would have opened my mouth. But it was not. It involves the very issue of life and death, perhaps, to this country; and I am not going to delegate that power to any private corporation, so that we may be jeopardized in the future because I did not do my duty, when it was positively stated in the initial bill, and reiterated in this measure, that we were attempting to provide for the national defense. Our need for doing something was made painfully evident in the last war, so that we had to call the Allies together and mutually create a fund to buy nitrate of soda and distribute it amongst the Allies in order to carry on the war against the German Empire.

Mr. REED of Missouri. Mr. President, I want to suggest to the Senator a unanimous-consent agreement, under which on Tuesday next at not later than 2 o'clock—Monday, I understand, being otherwise occupied—we shall vote on his amendment. If we agree to vote at 2 o'clock, it will leave two hours for discussion if anyone wants to discuss the amendment, but I suggest that at not later than 2 o'clock on Tuesday we shall vote.

Mr. SMITH. That will be all right; but suppose we agree to meet at 11 on Tuesday, so as to give three hours. I would be perfectly willing to agree to that.

Mr. REED of Missouri. Very well. I will propose the following unanimous-consent agreement——

Mr. HARRISON. Does not the Senator think it better to limit the time of Senators, then, to 10 minutes, or 5 minutes, so that one Senator could not take all the time?

Mr. REED of Missouri. I ask unanimous consent that on Tuesday, December 16, at not later than 2 o'clock, we shall vote upon what is known as the Smith amendment, and that no Senator shall speak more than once nor longer than 10 minutes upon the amendment.

Mr. SMITH. That is agreeable to me.

Mr. UNDERWOOD. That is, during that time?

Mr. REED of Missouri. Certainly.

Mr. SMITH. Certainly; and that when the Senate takes a recess on Monday it agree to meet at 11 o'clock.

Mr. REED of Missouri. I have included that.

Mr. SMOOT. I do not think that should go in. A number of us are working very hard on bills which are very important, so that we can not be in the Chamber at 11 o'clock, and when the 10-minute speeches begin I would like to be here.

Mr. SMITH. I suggest to make the hour of voting 3 o'clock, and that would give us three hours if we meet at 12.

Mr. SMOOT. I have no objection to that.

Mr. REED of Missouri. Then I propose that at not later than 3 o'clock on the calendar day of Tuesday, December 16, the Senate shall proceed to vote upon what is known as the Smith amendment, or any amendments thereto, and that upon Tuesday no Senator shall speak more than once or longer than 10 minutes upon the Smith amendment.

Mr. UNDERWOOD. Or upon any subject before us.

Mr. REED of Missouri. Or upon any other subject.

The PRESIDENT pro tempore. The Secretary will report the proposed unanimous-consent agreement.

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of Tuesday, December 16, 1924, at not later than 3 o'clock p. m., the Senate shall proceed to vote without further debate upon the amendment of Mr. SMITH to House bill 518, and that no Senator shall speak more than once or longer than 10 minutes upon said amendment or upon any other subject.

Mr. CURTIS. Prior to 3 o'clock.

Mr. REED of Missouri. Let it read, "and prior to the final disposition of said amendment no Senator shall speak more than once or longer than 10 minutes."

The PRESIDENT pro tempore. The Secretary will again report the proposed agreement.

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of Tuesday, December 16, 1924, at not later than 3 o'clock p. m., the Senate shall proceed to vote without further debate upon the amendment of Mr. SMITH to House bill 518, and prior to the vote no Senator shall speak more than once or longer than 10 minutes upon said amendment or upon any subject.

Mr. REED of Missouri. Strike out "upon said amendment" and all the rest of it, and let it conclude "shall speak more than once or longer than 10 minutes."

Mr. SMITH. That is all right.

The PRESIDENT pro tempore. The Secretary will again read the tentative agreement.

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of Tuesday, December 16, 1924, at not later than 3 o'clock p. m., the Senate shall proceed to vote without further debate upon the amendment of Mr. SMITH to House bill 518, and prior to the vote no Senator shall speak more than once or longer than 10 minutes.

The PRESIDENT pro tempore. Is there objection to the unanimous-consent agreement? The Chair hears none, and it is so ordered.

The agreement was reduced to writing as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, by unanimous consent, that on the calendar day of Tuesday, December 16, 1924, at not later than 3 o'clock p. m., the Senate will proceed to vote, without further debate, upon the amendment of Mr. SMITH to the bill, H. R. 518, relating to the disposal of Muscle Shoals, etc., and that on said calendar day and prior to the vote no Senator shall speak more than once or longer than 10 minutes.

EXECUTIVE SESSION

Mr. CURTIS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 10 minutes spent in executive session the doors were reopened.

PROPOSED INVESTIGATION OF THE NAVY

Mr. KING. Mr. President, I move that Senate Resolution 272, directing the Committee on Naval Affairs to investigate the future use of navy yards and personnel in naval construction, and so forth, which was submitted by me on December 4, 1924, and ordered to lie on the table, be taken from the table and referred to the Committee on Naval Affairs.

The motion was agreed to.

REUBEN R. HUNTER

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 353) for the relief of Reuben R. Hunter.

Mr. JONES of New Mexico. Mr. President, I move that the Senate disagree to the amendment of the House, request a conference with the House on the disagreeing votes, and that the Chair appoint conferees on the part of the Senate.

The motion was agreed to, and the President pro tempore appointed Mr. CAPPER, Mr. SPENCER, and Mr. BAYARD conferees on the part of the Senate.

GIFT BY ELIZABETH SPRAGUE COOLIDGE TO THE LIBRARY OF CONGRESS

Mr. PEPPER. From the Committee on the Library I report back favorably with an amendment the joint resolution (S. J. Res. 152) to accept the gift of Elizabeth Sprague Coolidge for the construction of an auditorium in connection with the Library of Congress, and to provide for the erection thereof, and I ask unanimous consent for its present consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The amendment was to add two sections at the end of the joint resolution, as follows:

SEC. 4. Should other gifts be proffered applicable to the perfection or equipment of the proposed structure for its intended uses, the Architect of the Capitol may, with the concurrence of the librarian and approval of the Joint Committee on the Library, accept and apply them, any moneys so accepted being deposited with the Treasurer of the United States, credited to the special fund, and disbursed as provided herein for the original gift.

SEC. 5. No contract shall be entered into or obligation incurred for the design, construction, or equipment of the structure in excess of the moneys actually available from the total of such gifts.

So as to make the joint resolution read:

Resolved, etc., That the offer of Elizabeth Sprague Coolidge, communicated by the Librarian of Congress and set out in the following language, to wit:

"In pursuance of my desire to increase the resources of the music division of the Library of Congress, and especially in the promotion of chamber music, for which I am making an additional provision in the nature of an endowment, I offer to the Congress of the United States the sum of $60,000 for the construction and equipment in connection with the Library of an auditorium, which shall be planned for and dedicated to the performance of chamber music, but shall also be available (at the discretion of the librarian and the chief of the music division) for any other suitable purpose, secondary to the needs of the music division."

be, and the same is hereby, accepted.

SEC. 2. The Treasurer of the United States is hereby authorized to receive from the said Elizabeth Sprague Coolidge the above sum of $60,000, to receipt for it in the name of the United States of America,

and to credit it on the books of the Treasury Department as a special fund dedicated to the purpose stated, and subject to disbursement for such purpose upon vouchers submitted by the Architect of the Capitol as provided in section 3.

SEC. 3. The Architect of the Capitol is hereby authorized and directed, in consultation with the Librarian of Congress and subject to the approval of the Joint Committee on the Library, and within the limit of the sum available, to prepare or contract for the preparation of plans for the proposed auditorium and, within such limit, to construct or contract for the construction of such auditorium on land within or appurtenant to the Library, and to purchase in the open market the necessary equipment therefor; and upon proper vouchers to draw upon the said special fund for the expenses of such plans, construction, and equipment.

SEC. 4. Should other gifts be proffered applicable to the perfection or equipment of the proposed structure for its intended uses, the Architect of the Capitol may, with the concurrence of the librarian and approval of the Joint Committee on the Library, accept and apply them, any moneys so accepted being deposited with the Treasurer of the United States, credited to the special fund, and disbursed as provided herein for the original gift.

SEC. 5. No contract shall be entered into or obligation incurred for the design, construction, or equipment of the structure in excess of the moneys actually available from the total of such gifts.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

RECESS

Mr. CURTIS. I move that the Senate take a recess, the recess being under the order previously made, until Monday at 11.50 o'clock a. m.

The motion was agreed to; and (at 4 o'clock and 10 minutes p. m.) the Senate took a recess until Monday, December 15, 1924, at 11.50 o'clock a. m.

NOMINATIONS

Executive nominations received by the Senate December 13 (legislative day of December 10), 1924

COMMISSIONER OF IMMIGRATION

Thomas B. R. Mudd, of Maryland, to be commissioner of immigration at the port of Baltimore, Md.

APPOINTMENTS IN THE REGULAR ARMY

MEDICAL ADMINISTRATIVE CORPS

To be second lieutenants with rank from December 6, 1924

Master Sergt. Albert Francis Dowler, Medical Department.

Staff Sergt. Edward Martin Wones, Medical Department.

APPOINTMENTS BY TRANSFER IN THE REGULAR ARMY

JUDGE ADVOCATE GENERAL'S DEPARTMENT

Capt. Thomas Henry Green, Cavalry, with rank from July 1, 1920.

ORDNANCE DEPARTMENT

Second Lieut. Lawrence Coy Leonard, Coast Artillery Corps, with rank from June 13, 1922.

CHEMICAL WARFARE SERVICE

First Lieut. Walter Julius Ungethuem, Infantry, with rank as prescribed by the act of June 30, 1922.

FIELD ARTILLERY

Lieut. Col. Ernest Stephen Wheeler, Quartermaster Corps, with rank from November 3, 1920.

Capt. William Henry Egle Holmes, Signal Corps, with rank from July 1, 1920.

COAST ARTILLERY CORPS

First Lieut. Logan Osburn Shutt, Infantry, with rank from April 9, 1924.

INFANTRY

Col. Russell Creamer Langdon, Adjutant General's Department, November 26, 1924, with rank from July 1, 1920.

PROMOTIONS IN THE REGULAR ARMY

TO BE COLONEL

Lieut. Col. Wait Chatterton Johnson, Infantry, from December 6, 1924.

TO BE LIEUTENANT COLONELS

Maj. Adam Floy Casad, Ordnance Department, from December 4, 1924.

Maj. John Epps Munroe, Ordnance Department, from December 6, 1924.

TO BE MAJORS

Capt. Clyde Raymond Eisenschmidt, Infantry, from December 2, 1924.

Capt. John McDonald Thompson, Cavalry, from December 4, 1924.

Capt. James Alward Van Fleet, Infantry, from December 6, 1924.

TO BE CAPTAINS

First Lieut. William Vincent Randall, Ordnance Department, from November 27, 1924.

First Lieut. Will Vermilya Parker, Signal Corps, from December 2, 1924.

First Lieut. Floyd Newman Shumaker, Air Service, from December 4, 1924.

First Lieut. Lowell Herbert Smith, Air Service, from December 6, 1924.

First Lieut. Albert Edward Higgins, Field Artillery, from December 7, 1924.

TO BE FIRST LIEUTENANTS

Second Lieut. Haynie McCormick, Air Service, from November 27, 1924.

Second Lieut. Arthur Henry Wolf, Infantry, from December 2, 1924.

Second Lieut. Albert Theodore Wilson, Infantry, from December 4, 1924.

Second Lieut. Leonard Vezina, Quartermaster Corps, from December 6, 1924.

Second Lieut. Hartwell Matthew Elder, Quartermaster Corps, from December 7, 1924.

OFFICERS' RESERVE CORPS OF THE ARMY

TO BE BRIGADIER GENERAL

Albert Greenlaw, brigadier general, Maine National Guard.

POSTMASTERS

ALASKA

Martin Conway to be postmaster at Skagway, Alaska, in place of Martin Conway. Incumbent's commission expired June 4, 1924.

Charles W. Carter to be postmaster at Juneau, Alaska, in place of Z. M. Bradford. Incumbent's commission expired June 4, 1924.

CALIFORNIA

Floyd E. Kidd to be postmaster at Williams, Calif., in place of F. E. Kidd. Incumbent's commission expired February 11, 1924.

Clement J. Nash to be postmaster at San Mateo, Calif., in place of J. J. McGrath. Incumbent's commission expired June 4, 1924.

Florence M. Cole to be postmaster at Ross, Calif., in place of Ralph Cole. Incumbent's commission expired June 4, 1924.

Ben Lee to be postmaster at Cazadero, Calif. Office became presidential October 1, 1924.

COLORADO

Isadore D. Bronfin to be postmaster at Sanatorium, Colo. Office became presidential October 1, 1924.

CONNECTICUT

William Krause to be postmaster at Westport, Conn., in place of W. J. Wood. Incumbent's commission expired February 4, 1924.

Hal R. Kellogg to be postmaster at Woodmont, Conn., in place of W. J. Phillips, resigned.

FLORIDA

Edward R. Joyce to be postmaster at St. Augustine, Fla., in place of C. F. Hopkins. Incumbent's commission expired February 20, 1924.

Joseph J. B. Taylor to be postmaster at Panama City, Fla., in place of F. I. Murrow. Incumbent's commission expired February 14, 1924.

Marion C. Douglas to be postmaster at De Land, Fla., in place of E. L. Powe. Incumbent's commission expired February 20, 1924.

Wesley Herrick to be postmaster at Daytona Beach, Fla., in place of J. B. Reed. Incumbent's commission expired June 4, 1924.

George L. Chamberlin to be postmaster at Sutherland, Fla. Office became presidential April 1, 1924.

Maude M. O. Park to be postmaster at Sebastian, Fla. Office became presidential April 1, 1924.

Nellie P. Perry to be postmaster at San Antonio, Fla. Office became presidential April 1, 1924.

Emma M. Cromartie to be postmaster at Reddick, Fla. Office became presidential October 1, 1923.

Francis C. Leavins to be postmaster at Ponce de Leon, Fla. Office became presidential October 1, 1924.

Earl B. Pennington to be postmaster at Ortega, Fla. Office became presidential April 1, 1924.

Flora E. Burks to be postmaster at Ocoee, Fla. Office became presidential April 1, 1924.

Clarkson C. Harvey to be postmaster at Lake Hamilton, Fla. Office became presidential April 1, 1924.

Carl M. James to be postmaster at Hollywood, Fla. Office became presidential January 1, 1924.

Hattie A. Stevens to be postmaster at Greenwood, Fla. Office became presidential April 1, 1924.

William H. Neel to be postmaster at Grand Ridge, Fla. Office became presidential October 1, 1923.

Helen Corson to be postmaster at Beresford, Fla. Office became presidential January 1, 1921.

Clyde Lemmon to be postmaster at Barberville, Fla. Office became presidential January 1, 1924.

Carter T. Daves to be postmaster at Babson Park, Fla. Office became presidential July 1, 1924.

Shelly L. Hayes to be postmaster at New Smyrna, Fla., in place of H. W. Fuller, resigned.

Edgar W. Morris to be postmaster at Fellsmere, Fla., in place of M. A. Carrier, resigned.

Lyndal A. Barber to be postmaster at Cross City, Fla., in place of J. M. McKinney, resigned.

HAWAII

Frederick W. Carter to be postmaster at Waialua, Hawaii, in place of W. C. Irwin. Incumbent's commission expired June 4, 1924.

Thomas E. Longstreth to be postmaster at Lihue, Hawaii, in place of T. E. Longstreth. Incumbent's commission expired April 9, 1924.

IDAHO

Robert R. Coon to be postmaster at Emmett, Idaho, in place of S. D. Riggs. Incumbent's commission expired June 5, 1924.

Effie Taylor to be postmaster at White Bird, Idaho, in place of A. M. Reynolds, removed.

Joseph B. Newbury to be postmaster at Mullan, Idaho, in place of W. F. McCullough, resigned.

Golda O. Esveldt to be postmaster at Bovill, Idaho, in place of E. H. Gilfoy, resigned.

Catherine J. Craig to be postmaster at Avery, Idaho, in place of D. A. Pears, resigned.

ILLINOIS

Henry W. Mathis to be postmaster at Morton, Ill., in place of P. J. Yentes. Incumbent's commission expired June 5, 1924.

Lou R. Carmichael to be postmaster at Stillman Valley, Ill., in place of I. C. Revell, resigned.

Elmer B. Leavitt to be postmaster at Hammond, Ill., in place of L. R. Sutter, removed.

INDIANA

Alleary A. Anderson to be postmaster at Churubusco, Ind., in place of L. H. Kocher. Incumbent's commission expired June 5, 1924.

William G. Greemann to be postmaster at Batesville, Ind., in place of Nicholas Volz. Incumbent's commission expired June 5, 1924.

IOWA

Myrtle M. McNelly to be postmaster at Hanlontown, Iowa. Office became presidential July 1, 1924.

Ida Kelly to be postmaster at Harpers Ferry, Iowa, in place of M. D. Kelly, deceased.

LOUISIANA

Johnnie D. Stagg to be postmaster at Longville, La. Office became presidential October 1, 1924.

MASSACHUSETTS

Albin K. Parker to be postmaster at Norwood, Mass., in place of J. F. McManus. Incumbent's commission expired June 5, 1924.

MINNESOTA

Ernst A. Lofstrom to be postmaster at Litchfield, Minn., in place of J. N. Gayner. Incumbent's commission expired June 5, 1924.

John R. Norgren to be postmaster at Foreston, Minn., in place of J. R. Norgren. Incumbent's commission expired June 5, 1924.

Nels E. Berg to be postmaster at Cokato, Minn., in place of A. M. Loberg. Incumbent's commission expired June 5, 1924.

Svend Petersen to be postmaster at Askov, Minn., in place of J. R. Petersen. Incumbent's commission expired April 7, 1924.

Everett R. Vitilas to be postmaster at Shafer, Minn. Office became presidential October 1, 1924.

Percy Cole to be postmaster at Isle, Minn., in place of O. A. Haggberg, resigned.

MISSOURI

Harry G. Pippenger to be postmaster at Fairmount, Mo. Office became presidential July 1, 1924.

MONTANA

Richard Brimacombe to be postmaster at Butte, Mont., in place of P. B. C. Goodwin. Incumbent's commission expired June 4, 1924.

Mary A. Dolin to be postmaster at Medicine Lake, Mont., in place of J. H. Dolin, deceased.

Alice L. Cory to be postmaster at East Helena, Mont., in place of E. B. Richardson, deceased.

NEBRASKA

Leroy L. Ambler to be postmaster at Holbrook, Nebr., in place of H. L. Stebbins. Incumbent's commission expired April 9, 1924.

NEVADA

Muriel B. Allenwood to be postmaster at Yerington, Nev., in place of G. L. Whorton, resigned.

NEW JERSEY

William E. Flagg to be postmaster at Westville, N. J., in place of R. M. Crawford. Incumbent's commission expired June 5, 1924.

NEW MEXICO

Francis O. Polston to be postmaster at Melrose, N. Mex., in place of A. D. Sweet, resigned.

Karl L. Milam to be postmaster at Madrid, N. Mex., in place of J. C. Brown, declined.

NEW YORK

Chris Fox to be postmaster at St. Johnsville, N. Y., in place of J. F. Haggerty. Incumbent's commission expired March 2, 1924.

Charles E. Hardy to be postmaster at Hudson, N. Y., in place of J. F. Brennen. Incumbent's commission expired April 23, 1924.

Agnes Siems to be postmaster at Wantagh, N. Y. Office became presidential October 1, 1924.

Belle M. Clark to be postmaster at Silver Springs, N. Y., in place of A. H. Clark, deceased.

Mary A. Fryer to be postmaster at St. James, N. Y., in place of R. L. Smith, removed.

NORTH CAROLINA

James P. Turnley to be postmaster at Cameron, N. C., in place of N. C. McFayden, removed.

NORTH DAKOTA

William R. Tucker to be postmaster at Agricultural College, N. Dak., in place of A. E. Ross, removed.

OHIO

John M. McConnell to be postmaster at Mingo Junction, Ohio, in place of R. L. Hagerty. Incumbent's commission expired June 4, 1924.

George H. Scheetz to be postmaster at Bridgeport, Ohio, in place of T. M. Duncan. Incumbent's commission expired June 4, 1924.

Charles F. Shoemaker to be postmaster at Pickerington, Ohio. Office became presidential July 1, 1924.

Will B. Maynard to be postmaster at Olmsted Falls, Ohio. Office became presidential October 1, 1924.

Elizabeth F. Kelley to be postmaster at North Olmsted, Ohio. Office became presidential October 1, 1924.

Harriett E. Craig to be postmaster at Neffs, Ohio, in place of Besse Carney, removed.

OREGON

Earl B. Watt to be postmaster at Falls City, Oreg., in place of R. G. White, resigned.

PENNSYLVANIA

Charles H. Heller to be postmaster at Morrisville, Pa., in place of E. H. Sutterly. Incumbent's commission expired August 5, 1923.

Thomas P. Delaney to be postmaster at Castle Shannon, Pa., in place of T. P. Delaney. Incumbent's commission expired August 5, 1923.

Jenny Paterson to be postmaster at Yukon, Pa., in place of R. H. Brown, resigned.

SOUTH DAKOTA

Emmett O. Frescoln to be postmaster at Winner, S. Dak., in place of F. E. Goode. Incumbent's commission expired April 7, 1924.

Thomas A. Krikac to be postmaster at Dupree, S. Dak., in place of F. E. Riley. Incumbent's commission expired June 4, 1924.

TENNESSEE

Grosvenor M. Steele to be postmaster at Bemis, Tenn., in place of F. R. Ballard, resigned.

TEXAS

Emil J. Spiekerman to be postmaster at Skidmore, Tex., in place of Gustave Natho, resigned.

VERMONT

Harold C. Richardson to be postmaster at Roxbury, Vt. Office became presidential October 1, 1924.

VIRGINIA

Norborne G. Smith to be postmaster at South Hill, Va., in place of R. J. Northington. Incumbent's commission expired August 15, 1923.

James J. Mateer to be postmaster at Rosslyn, Va., in place of W. H. Rixey. Incumbent's commission expired May 10, 1924.

Andrew F. Johnson to be postmaster at Millboro, Va., in place of M. M. Landers. Incumbent's commission expired February 14, 1924.

John M. B. Lewis to be postmaster at Lynchburg, Va., in place of I. H. Adams, jr. Incumbent's commission expired February 14, 1924.

Nellie A. Mannes to be postmaster at Boykins, Va., in place of A. S. Francis. Incumbent's commission expired June 4, 1924.

Hugh H. Slemp to be postmaster at Big Stone Gap, Va., in place of G. E. Gilly. Incumbent's commission expired August 15, 1923.

Newton F. Smith to be postmaster at Berryville, Va., in place of G. H. Levi. Incumbent's commission expired February 14, 1924.

Mattie C. Berry to be postmaster at Accomac, Va., in place of W. G. Stevenson. Incumbent's commission expired June 4, 1924.

William H. Meador to be postmaster at Moneta, Va. Office became presidential January 1, 1924.

Frank P. Sutherland to be postmaster at McClure, Va. Office became presidential October 1, 1923.

Maude L. Bateman to be postmaster at Lowmoor, Va. Office became presidential January 1, 1924.

Charlotte V. Bevans to be postmaster at Greenbackville, Va. Office became presidential April 1, 1924.

Virginia H. Silcox to be postmaster at Andover, Va. Office became presidential October 1, 1923.

George E. Adkins to be postmaster at Grundy, Va., in place of Ida Valley, removed.

Ross W. Walker to be postmaster at Fort Humphreys, Va., in place of L. E. Beach, resigned.

Myrtle N. Lafoon to be postmaster at Ettricks, Va., in place of W. F. Correll, removed.

Charles F. Gauthier to be postmaster at Bristol, Va., in place of E. S. Kendrick, removed.

John W. Smith to be postmaster at Belle Haven, Va., in place of H. L. Johnson, resigned.

WASHINGTON

Pearl B. Burrill to be postmaster at Snoqualmie Falls, Wash., in place of C. E. Kennedy. Incumbent's commission expired February 11, 1924.

Birdie L. Crook to be postmaster at Nespelem, Wash. Office became presidential October 1, 1924.

WEST VIRGINIA

Osby C. Satterfield to be postmaster at Hopemont, W. Va. Office became presidential July 1, 1924.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 13 (legislative day of December 10), 1924

MEMBERS FEDERAL BOARD FOR VOCATIONAL EDUCATION

Harry L. Fidler.
Edward T. Franks.

PROMOTIONS IN THE ARMY

Dennis Edward Nolan to be major general.

Frank Merrill Caldwell to be brigadier general, Cavalry.

William Eric Morrison to be professor of modern languages at the United States Military Academy.

William Sydney Thayer to be brigadier general, medical section, Officers' Reserve Corps.

Roy Hoffman to be brigadier general, Officers' Reserve Corps.

Cornelius Vanderbilt to be brigadier general, Officers' Reserve Corps.

Edward Vollrath to be brigadier general, Officers' Reserve Corps.

Claude Vivian Birkhead to be brigadier general, Officers' Reserve Corps.

William Ormiston Richardson to be brigadier general, Officers' Reserve Corps.

Lloyd Denison Ross to be brigadier general, Officers' Reserve Corps.

George Ared White to be brigadier general, Officers' Reserve Corps.

POSTMASTERS

ALABAMA

Thalia F. Pratt, Carrollton.

COLORADO

Robert C. Alexander, Brighton.
Thomas N. Wayne, Edgewater.
Nellie M. Mickey, Evergreen.
Lewis W. Kennedy, Hot Sulphur Springs.
Fannie E. Arnett, Peetz.
Charles J. Funk, Sterling.

CONNECTICUT

Mary A. Tracy, Central Village.
John J. O'Neill, Killingly.
George E. Dickinson, Rockville.

ILLINOIS

David A. Howard, Glasford.
Nora M. Aull, Kincaid.
Edwin R. Erickson, Media.
Leah M. Le Marr, Modesto.
John Hudson, Valier.

LOUISIANA

Emile Aubert, Abita Springs.
Milton E. Kidd, Choudrant.
Cyrus E. Roberts, Merryville.
Rena F. Eckart, Natalbany.

MAINE

Louis S. Isbell, North Anson.

MASSACHUSETTS

Patrick H. McIntyre, Clinton.

MINNESOTA

Anna Slindee, Adams.
John V. Barstow, Brownsdale.
John L. Christianson, Harmony.
A. Wilbert Anderson, Proctor.

NEW JERSEY

Robert E. Torrance, Arlington.
David Tumen, Atlantic Highlands.
Le Roy Duckworth, Clinton.
Anna G. Rockhill, Columbus.
Everett H. Kuebler, Englishtown.
Ralph E. Liddle, Fords.
James L. O'Donnell, Hammonton.
Walter G. Barber, Millville.
Evan F. Benners, Moorestown.
Gustav L. Meyn, Palisade.
Walter E. Walling, Port Monmouth.
Harry W. Mutchler, Rockaway.
Alfred Johansen, Smithville.
Hiram H. Shepherd, South Boundbrook.

NEW MEXICO

John H. York, East Las Vegas.
Carl Seligman, Grant.
Mahan Wyman, Loving.
Clara L. Kennedy, San Jon.

OKLAHOMA

Helen Whitlock, Maramec.
John R. O'Connell, Willow.

OREGON

Howard C. Getz, Coquille.
Elbert Smith, Cottage Grove.
Frederick D. Gardner, Forest Grove.
J. Clyde Martin, Grants Pass.
Gaylord G. Godfrey, Independence.
Willis E. Everson, Waldport.

PENNSYLVANIA

Clarence G. Young, Bristol.
H. George Marburger, Denver.
Samuel Y. Wissler, Ephrata.
John M. Kurtz, Honey Brook.
Grant Umberger, Langhorne.
Enos A. Freed, Souderton.
Lincoln G. Nyce, Vernfield.

SOUTH CAROLINA

Silas C. Arnold, Central.
Benjamin T. Frierson, Conway.
George R. Hudson, Williston.

UTAH

Paul G. Johnson, Grantsville.
Heber J. Sheffield, jr., Kaysville.
David T. Lewis, Spanish Fork.

WYOMING

Frank A. Beard, Chugwater.
John H. Mantle, Kemmerer.
Louis E. Eaton, Torrington.

WITHDRAWAL

Executive nomination withdrawn from the Senate December 13 (legislative day of December 10), 1924

PROMOTION IN THE ARMY

INFANTRY

Col. Russell Creamer Langdon, Adjutant General's Department, November 28, 1924, with rank from July 1, 1920. The nomination was submitted to the Senate December 3, 1924.

HOUSE OF REPRESENTATIVES

SATURDAY, *December 13, 1924*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Most gracious Heavenly Father, in grateful recognition of our dependence upon Thee, we wait in Thy presence to say our prayer; do Thou condescend to hear us. We seek Thy guidance that we may walk worthy of our vocation and live well to-day. May all personal interests be lost in the needs and demands of our country. Everywhere may the hearts of selfish men be melted into the spirit of brotherly love and Christian charity. Bless all our homes with purity and sweetness, and may we ever be sensitive toward their sanctities. Lead us to understand that Thy moral and spiritual ideals are the working plans for the higher life of man, and the best that we can do apart from them is in vain. Help us to live our lives in the spirit of the high-minded citizen, generous, untiring, dutiful, and fearless of danger, and hopeful of good. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE PRESIDENT

Sundry messages in writing from the President of the United States, by Mr. Latta, one of his secretaries, who also informed the House of Representatives that the President had, on December 8, approved and signed the following bill:

H. R. 6426. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors.

NAVAL APPROPRIATION BILL

Mr. FRENCH, by direction of the Committee on Appropriations, reported the bill (H. R. 10724) making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1926, and for other purposes (Rept. No. 1044), which was read a first and second time, and, with the accompanying report, was referred to the Committee of the Whole House on the state of the Union and ordered printed.

Mr. GARRETT of Tennessee reserved all points of order.

Mr. LAGUARDIA. Mr. Speaker, I ask the consideration at this time of House Resolution 365, reported from the Judiciary Committee.

Mr. BEGG. Mr. Speaker, I make a point of order on the request.

Mr. BLANTON. I make the point of order, Mr. Speaker, we have no quorum.

Mr. LONGWORTH. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, when the following Members failed to answer to their names:

[Roll No. 8]

Allgood	Drewry	Lee, Ga.	Rogers, N. H.
Anderson	Eagan	Lindsay	Rosenbloom
Bacon	Fairchild	Lineberger	Sanders, N. Y.
Barkley	Fish	Linthicum	Schall
Beedy	Fitzgerald	Logan	Sherwood
Berger	Fredericks	McLaughlin, Nebr.	Smithwick
Black, Tex.	Frothingham	Madden	Snell
Bloom	Gallivan	Magee, Pa.	Speaks
Boylan	Geran	Manlove	Stalker
Britten	Gifford	Mead	Sullivan
Browne, N. J.	Glatfelter	Merritt	Sweet
Buckley	Goldsborough	Michaelson	Swoope
Burdick	Graham	Miller, Ill.	Tague
Byrnes, S. C.	Guyer	Mills	Thompson
Carter	Harrison	Mooney	Tilson
Casey	Hill, Md.	Morehead	Tinkham
Celler	Howard, Nebr.	Morin	Tucker
Clague	Jacobstein	Nelson, Wis.	Tydings
Clark, Fla.	Jeffers	Newton, Minn.	Valle
Cooper, Ohio	Johnson, Wash.	Nolan	Vare
Corning	Johnson, Ky.	O'Brien	Vinson, Ga.
Croll	Johnson, W. Va.	O'Connor, N. Y.	Wainwright
Crowther	Johnson, S. Dak.	O'Sullivan	Ward, N. Y.
Cummings	Kahn	Oliver, N. Y.	Ward, N. C.
Curry	Kelly	Paige	Weller
Davey	Kendall	Parker	Welsh
Davis, Minn.	Kent	Patterson	Williams, Mich.
Dempsey	Kiess	Perlman	Winslow
Dickinson, Iowa	Kincheloe	Porter	Wolff
Dickstein	Knutson	Quayle	Woodrum
Dominick	Kunz	Ransley	Wurzbach
Doyle	Langley	Reed, W. Va.	Zihlman
Drane	Larson, Minn.	Rogers, Mass.	

The SPEAKER. Two hundred and ninety-eight Members have answered to their names, a quorum.

Mr. LONGWORTH. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to.

The doors were opened.

INITIAL EMBARGO PROMULGATED BY THE SECRETARY OF THE INTERIOR ON DECEMBER 5, 1896

Mr. HUDSPETH. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the subject of reclamation and to print a certain document prepared by Mr. Hamele, the assistant solicitor of the department.

The SPEAKER. The gentleman from Texas asks unanimous consent to extend his remarks in the RECORD and to print with them a certain document. Is there objection?

There was no objection.

Mr. HUDSPETH. Mr. Speaker and gentlemen of the House, many inquiries have been made concerning the initial embargo promulgated by the Secretary of the Interior, on December 5, 1896, against the use of the waters of the upper Rio Grande for irrigation purposes, and as showing the reasons for said embargo and the justness thereof, as my mind conceives the fairness and justness thereof, I herewith submit, as a part of my remarks, one of the ablest historical briefs I have ever read, fully and with accuracy and fairness portraying the facts—and all the facts—connected therewith, by that splendid and able authority on reclamation laws, Hon. Ottamar Hamele, special attorney representing the Bureau of Reclamation before the Rio Grande Commission.

Every Member of this House will be amply repaid if he will give this document a most exhaustive and careful perusal.

The brief is as follows:

THE EMBARGO ON THE UPPER RIO GRANDE

(By Ottamar Hamele, special attorney representing the Bureau of Reclamation before the Rio Grande Commission)

FIRST SETTLEMENTS IN RIO GRANDE VALLEY

Spanish explorers under Coronado, moving easterly from the Pacific, reached the Valley of the Rio Grande before the middle of the sixteenth century. They found the Pueblo Indians irrigating fields of wheat, corn, fruit, and flowers from the waters of this river and its tributaries. The acequias then in use indicated great age, and suggested the existence of a prehistoric people of substantial population.

The Ysleta Church below El Paso and the Juarez Church across the river, probably date back to the middle of the sixteenth century. The city of Juarez, Mexico (formerly called Paso del Norte) was an important town in the year 1600. Its diversion from the Rio Grande (Acequia Madre) quite likely was constructed more than 350 years ago.

The first attempts of the Spaniards to colonize the Valley of the Rio Grande were carried on from Juarez as a base. Sante Fe was made the capital of New Mexico in 1605. Barnalillo was founded about the year 1700 and Albuquerque in 1706. Permanent settlement

in the San Luis Valley in Colorado was not begun until after 1850. The town of Conejos was founded by Mexicans in 1855, and the Mormons established Manassa in 1878.

PIONEER IRRIGATION DEVELOPMENTS

As already stated, the Acequia Madre at Juarez is probably 350 years of age. The rights under the Ysleta, San Elizario, and Socorro ditches at El Paso are quite ancient. Each permanent white settlement in the Rio Grande Valley represents at least one diversion substantially as of the date of the settlement. In addition to these were the earlier irrigation rights of the Pueblo Indians.

The first half of the last century saw a considerable extension of irrigation in this region. The El Paso city ditch (formerly Ponce acequia) was built in 1827. In the Mesilla Valley, in New Mexico, the Dona Ana ditch was constructed in 1844, the Las Cruces ditch in 1849, and the Mesilla ditch in 1850. In the San Luis Valley in Colorado, the People's Canal on Culebra Creek has an appropriation dating from 1852.

EXTENT OF IRRIGATION PRIOR TO 1880

Baron von Humboldt, who visited Juarez in 1806, wrote as follows regarding that region:

> "Travelers are in the habit of taking a short rest at Paso del Norte (Juarez) in order to lay in provisions so as to proceed on their way to Santa Fe. The country around El Paso included splendid fields comparable with the best in Andalusia. The land is sown with corn and wheat; the vines bear excellent grapes preferable even to those of New Biscay, and the gardens yield an abundance of European fruit such as peaches, apples, and pears. As the soil is very dry, an irrigating canal brings water from the Rio Grande to El Paso." (Travels of Humboldt, Vol. IX, p. 265, German edition.)

Maj. William Emory, of the United States Army, who explored the Rio Grande in 1852–1854, described Juarez and vicinity (the El Paso Valley) as a "continuous vineyard," and stated that an area extending for 20 miles on both sides of the river was in cultivation.

In 1880 this area consisted of approximately 25,000 acres on the Mexican side supporting a population of about 20,000, and approximately 15,000 acres on the American side with a population of about 10,000. It is estimated that 550 second-feet of water were diverted for this irrigation.

In the same year there were irrigated from the Rio Grande in the Territory of New Mexico approximately 183,000 acres, demanding the use of about 5,600 second-feet of water, and there were irrigated from the Rio Grande in the State of Colorado approximately 122,000 acres requiring about 3,700 second-feet of water. Of the area in New Mexico about 10,000 acres were irrigated in the Rincon Valley, and about 31,000 in the Mesilla Valley, just north of El Paso.

COMPLAINTS FROM MEXICO

In the early eighties of the last century complaints began to be made on behalf of irrigators in Mexico, to the effect that irrigation in the United States had been increased to such an extent as seriously to deplete the water supply used for centuries on the lands in the vicinity of Juarez. The diversions particularly complained of were those in the San Luis Valley in Colorado. These complaints, voiced at first by individual landowners, later were taken up by the Government of Mexico with our State Department at Washington. It was contended by the Mexican authorities that the diversions in the United States were in violation of the treaty of Guadalupe Hidalgo of February 2, 1848 (9 Stat. 22), and that damages amounting to upward of $35,000,000 had been sustained by the citizens of Mexico. It was suggested that a dam be constructed across the Rio Grande to provide the water to which the lands in Mexico were entitled.

General Stanley, of the United States Army, commanding the Department of Texas, in his official report dated September 12, 1889, says on this subject:

> "Our relations with our Mexican neighbors upon the long line of the Rio Grande have been kindly, although they are a good deal excited over what they deem the violation of their riparian rights through our people taking all the water of the Rio Grande for the irrigation of the San Luis Valley, which leaves the Rio Grande a dry bed for 500 miles. The question is one that must be settled by the State Department, and thus far there has been no call for military force. The remedy for this water famine and consequent ruin to the inhabitants of the Rio Grande Valley must be found in storage reservoirs, so easy of construction, one in the canyon opposite Taos and the other in the canyon near and north of El Paso."

CONCURRENT RESOLUTION OF APRIL 29, 1890

There ensued several years filled with bickerings over this matter. Americans became interested from a financial standpoint in the proposed international dam, and bills to provide for its construction by the United States were introduced in Congress. A bill of this character (S. 1644-H. R. 3924) introduced in the Fifty-first Congress (1889) provoked considerable discussion. The agitation culminated in the passage on April 29, 1890, of a concurrent resolution authorizing the President to enter into negotiations with the Government of Mexico for the purpose of remedying the difficulties existing between the two countries on account of the depleted water supply in the Rio Grande. Under treaty of March 1, 1889 (26 Stat., 1512) there was created an International Boundary Commission to pass on matters affecting the common boundaries of the two countries on the Rio Grande and the Colorado, but this commission was not authorized to consider the question of the depleted water supply, as has been frequently erroneously stated. A copy of the concurrent resolution of April 29, 1890, marked Exhibit A, is attached hereto.

THE RIO GRANDE DAM & IRRIGATION CO.

For several years immediately following the passage of the concurrent resolution of April 29, 1890, little or nothing was done by our Government to carry out the purpose of the resolution. In the meantime sections 18, 19, 20, and 21 of the statute of March 3, 1891 (26 Stat., 1095), authorizing rights of way over the public lands for canals, ditches, or reservoirs, was enacted into law, and on February 1, 1895, by approval of the Secretary of the Interior under said act, a private concern known as The Rio Grande Dam & Irrigation Co. secured a right of way over public lands to construct a large irrigation dam across the Rio Grande near Elephant Butte, in New Mexico, about 120 miles above the city of El Paso. Sections 18, 19, 20, and 21 of the right of way act of March 3, 1891, are marked Exhibit B and attached hereto. The dealings of the Government with The Rio Grande Dam & Irrigation Co. will be referred to later.

MORE COMPLAINTS FROM MEXICO

The activities of the Rio Grande Dam & Irrigation Co. led to renewed efforts on the part of the Mexican authorities to secure action from this Government under the concurrent resolution of April 29, 1890. It was realized that those in control of a large private dam across the Rio Grande in New Mexico would be able still further to reduce the water supply available for the Mexican lands. Also, it was assumed that if the proposed developments of the Rio Grande Dam & Irrigation Co. were carried out it would be infeasible to construct the proposed international dam at El Paso. Under date of October 21, 1895, the Mexican minister, M. Romero, sent a vigorous letter to Secretary of State Richard Olney, urging action under the concurrent resolution. A copy of this letter, marked "Exhibit C," is attached hereto.

OPINION OF ATTORNEY GENERAL HARMON

By letter dated November 5, 1895, the Secretary of State transmitted to Attorney General Judson Harmon a copy of the Mexican minister's letter of October 21, 1895, referred to the concurrent resolution of April 29, 1890, and requested answers to the following questions:

> "(1) Are the provisions of article 7 of the treaty of February 2, 1848, known as the treaty of Guadalupe Hidalgo, still in force so far as the river Rio Grande is concerned, either because never annulled or because recognized and reaffirmed by article 5 of the convention between the United States and Mexico of November 12, 1884?
>
> "(2) By the principles of international law, independent of any special treaty or convention, may Mexico rightfully claim that the obstructions and diversions of the waters of the Rio Grande, in the Mexican minister's note referred to, are violations of its rights, which should not continue for the future, and on account of which, so far as the past is concerned, Mexico should be awarded indemnity?"

On December 12, 1895, the Attorney General rendered an opinion, which is to be found in volume 21, Opinions Attorney General, at page 274. The following is the syllabus of the decision as found in the report:

> "Article VII of the treaty of February 2, 1848, between Mexico and the United States, known as the treaty of Guadalupe Hidalgo, is still in force, so far as it affects the Rio Grande.
>
> "The taking of water for irrigation from the Rio Grande above the point where it ceases to be entirely within the United States and becomes the boundary between the United States and Mexico is not prohibited by said treaty.
>
> "Article VII is limited in terms to that part of the Rio Grande lying below the southern boundary of New Mexico, and applies to such works alone as either party might construct on its own side.
>
> "The only right the treaty professed to create or protect with respect to the Rio Grande was that of navigation. Claims against the United States by Mexico for indemnity for injuries to agriculture alone, caused by scarcity of water resulting from irrigation ditches wholly within the United States at places far above the head of navigation, find no support in the treaty.
>
> "The rules, principles, and precedents of international law impose no duty or obligation upon the United States of denying to its inhabitants the use of the water of that part of the Rio Grande lying entirely within the United States, although such use results in reducing the volume of water in the river below the point where it ceases to be entirely within the United States.

"The fact that there is not enough water in the Rio Grande for the use of the inhabitants of both countries for irrigation purposes does not give Mexico the right to subject the United States to the burden of arresting its development and denying to its inhabitants the use of a provision which nature has supplied, entirely within its own territory. The recognition of such a right is entirely inconsistent with the sovereignty of the United States over its national domain."

AGREEMENT OF MAY 6, 1896

While the Attorney General's opinion of December 12, 1895, held that the complaints of the Mexican authorities were not justified either under treaty rights or under the rules of international law, the State Department apparently took the position that the United States was under a moral obligation to make good the depleted water supply of the Mexican lands.

On May 6, 1896, an agreement was made by Secretary of State Richard Olney, representing the United States, and the Mexican minister, M. Romero, representing the Mexican Government, under which Col. Anson Mills and Señor Don F. Javier Osorono, members of the International Boundary Commission, provided by the treaty of March 1, 1889, were directed to investigate and report as soon as practicable upon the following three questions:

"1. The amount of water of the Rio Grande taken by the irrigation canals constructed in the United States of America.

"2. The average amount of water in said river, year by year, before the construction of said irrigation canals and since said construction—the present year included.

"3. The best and most feasible mode, whether through a dam to be constructed across the Rio Grande near El Paso, Tex., or otherwise, of so regulating the use of the waters of said river as to secure to each country concerned and to its inhabitants their legal and equitable rights and interests in said waters."

JOINT COMMISSION REPORT OF NOVEMBER 25, 1896

Pursuant to the agreement of May 6, 1896, the joint commission therein named proceeded to consider and report upon the three questions set forth in that agreement. The commission's report bears date November 25, 1896.

On question No. 1, relative to the amount of water taken from the Rio Grande by irrigation canals constructed in the United States, the commission reported as follows:

"From the very elaborate statistical report of Civil Engineer Follett the commission find that prior to 1880 there were in Colorado 511 canals taken from the Rio Grande and its tributaries, irrigating about 121,000 acres of land; that this number of canals and amount of land irrigated has kept increasing year by year, many of the canals being enlarged during the same period, so that the number of canals at this date has increased to 925, irrigating 318,000 acres of land; and that in New Mexico there were, prior to 1880, 563 canals taken from the Rio Grande and its tributaries, irrigating 183,000 acres of land, and at the present time there are 603 canals, irrigating 186,000 acres of land.

"These results show an aggregate of 1,074 canals taken out in Colorado and New Mexico prior to 1880, and 1,528 taken from the river and its tributaries at this date, showing an increase of 454 canals and of 196,000 acres irrigated in the State of Colorado and Territory of New Mexico. This shows quite accurately the increase for the past 16 years. There are no reliable records available showing the increase in the preceding years, but they were doubtless on a more rapidly increasing ratio.

"It will also be observed that the greatest increase during these 16 years was in the State of Colorado, the number of canals and acres irrigated remaining almost stationary in New Mexico for that period; but this is easily accounted for by the fact that the appropriation of water in Colorado has rendered such a scarcity in New Mexico that little further increase of canals and acreage was profitable.

"It is evident to the commissioners that as the flow of water in the Rio Grande had not only become scarce at El Paso, but high up in New Mexico prior to 1888 or 1889, any increase of water used in Colorado would diminish materially the flow at El Paso during the irrigation season."

Relative to the second question, concerning the average amount of water in the Rio Grande year by year, the commission reported as follows:

"There are no records or testimony available which will enable the commissioners to determine this question entire with any degree of accuracy. The first record of the flow of the river here at El Paso was taken in 1889, the driest year up to that date, the river being dry as far above as Albuquerque, N. Mex., and no water passing El Paso for four months during the year, embracing August, September, October, and November. There is no tradition of such scarcity of water prior to this date—1889—the river only being dry once in about seven years, and then only for a short period in the latter part of the summer.

"For the 11 months prior to March 31, 1890, the flow of the river at El Paso was 425,000 acre-feet. This includes the long drought of 1889, before mentioned. For the year ending March 31, 1891, the flow was 1,100,000 acre-feet. For the year 1892 the flow at El Paso was 1,850,000 acre-feet. For the year 1893 the flow was 875,000 acre-feet.

"During a part of this time measurements at Embudo in the Rio Grande near the Colorado line showed that the flow at that point was greater than at El Paso, there being no increase in the flow from Embudo to El Paso. This fact is mentioned to show that the supply of water both in New Mexico and in the valley of El Paso depends, for the greater part, upon that of its headwaters in Colorado.

"An examination of the old canals in use in the El Paso Valley some 30 years ago convinces us that those on the Mexican side had a capacity of about 300 second-feet, and that those on the United States side had a capacity of about 250 second-feet.

"Many of these for the past five years have been constantly dry, and all of them have been dry for a great part of the irrigating season three years out of the five past.

"The foregoing is a condensed compendium of the large mass of information and statistics taken by our engineers, from which we form the following conclusions:

"That the flow of the river at El Paso has now been decreased by the taking of water for irrigation by canals constructed in the United States of America about 1,000 second-feet for 100 days annually, equal to 200,000 acre-feet of water.

"It will be observed that this loss is distributed through the summer flow, which at best was not always sufficient before the diminution took place during dry seasons.

"It should be understood that the great mass of these waters both before the construction of the canals and since consists of flood waters carried down the river unused, being utterly unavailable without large reservoirs to hold it for the season of irrigation, the maximum flow lasting but a few days, running as high as 16,000 second-feet, generally before the irrigation season fully sets in, and an average flood of about 5,000 second-feet during about 40 or 50 days in April and May."

On the third question, respecting the most feasible mode of regulating the use of the waters of the Rio Grande, so as to secure to each country an equitable right to the use of the waters, the commission reported as follows:

"The joint report of the engineers develops a feasible method of building a dam across the Rio Grande near El Paso, about 3 miles above, and impounding a large mass of the flood waters in a lake some 15 miles long by about 3½ miles wide, which it is believed by the commission will so regulate the use of the waters of said river as to secure to each country concerned and to its inhabitants their legal and equitable rights and interests in said waters, and neither they nor the commissioners have been able to discover any other feasible mode of consummating these ends.

"The joint commission is of the opinion that the present flow of the river is sufficient to maintain the reservoir as projected, but insufficient to maintain it and at the same time maintain the projected reservoir 120 miles above El Paso, in New Mexico, known as the Elephant Butte dam and reservoir. One of these projects, in the opinion of the commission, must give way to the other, or at least, if both are built, that at Elephant Butte must in some way be restrained from using water already appropriated by the citizens of the El Paso Valley, both Mexicans and Americans, and a method provided in case they violate these restraining rules for a prompt and efficient legal remedy for the parties injured.

* * * * * * *

"It is the opinion of the joint commission that Mexico has been wrongfully deprived for many years of a portion of her equitable rights in the flow of one-half of the waters of the Rio Grande at the time of the treaty of Guadalupe Hidalgo; and if there were no other evidence of that fact than the records and measurements above referred to, it is apparent to the eye of any visitor to the locality, where can be witnessed the dying fruit trees and vines, the abandoned fields and dry canals for the greatest portion that has heretofore been cultivated; and while we are considering the equitable rights of Mexico this is also true of the United States side, where almost the same abandonment and destruction of former prosperous farms may be witnessed.

"The joint commission is of the opinion that the impounding of this large body of the flood waters of the Rio Grande would not only effectually remedy the existing troubles regarding the equitable division of the waters of said river between the two countries, but would make it feasible to control the flow in the river so that it will be practically constant and uniform and prevent the erosions and avulsions which have heretofore ren-

dered the boundary line between the two countries so uncertain, unstable, and vexatious. It is certain that this effect will result as far down the river as the mouth of the next important tributary, the Concho River, of Mexico, and that the restraint of the torrential flow will, in a great degree, remedy the erosions and avulsions below the mouth of the Concho to the Gulf."

The commission recommended that the two Governments enter into a treaty to provide for a final settlement of all questions, past and future, regarding the distribution of the waters of the Rio Grande. It proposed that the United States defray all of the cost of the dam, estimated at $2,317,113.36; that an equitable distribution of the waters from the dam be made between the two countries, and that Mexico relinquish all claims for indemnity for the unlawful use of water in the past.

On the subject of interference with the water supply on the upper river, the commission recommended that the United States—

"in some way prevent the construction of any large reservoirs in the Rio Grande in the Territory of New Mexico, or in lieu thereof, if that be impracticable, restrain any such reservoirs hereafter constructed from the use of any waters to which the citizens of the El Paso Valley, either in Mexico or in the United States, have right by prior appropriation, and provide some legal and practicable remedy and redress, in case such waters should be used, to the citizens of both countries."

The complete text of the joint commission's report of November 25, 1896, with copies of other related papers, will be found in Senate Document No. 229, Fifty-fifth Congress, second session, 1898. Copies of additional papers on the general subject appear in Senate Document No. 154, Fifty-seventh Congress, second session, 1903.

STATE DEPARTMENT REQUESTS EMBARGO

On August 4, 1896, while the joint commission was considering the Mexican complaints in accordance with the concurrent resolution of April 29, 1890, and the agreement of May 6, 1896, the Mexican minister again addressed the Secretary of State on the subject, forwarding a petition calling attention to the distressing situation on the Mexican side of the Rio Grande, and stating that the efforts of the two Governments to remedy the condition would be fruitless if, in addition to the 40 dams in Colorado, the Rio Grande Irrigation & Land Co. (Ltd.), successor to the Rio Grande Dam & Irrigation Co., should be permitted to construct a dam across the river at Elephant Butte, N. Mex. The communication from the Mexican minister was referred to Col. Anson Mills, of the joint commission, who reported thereon under date of November 17, 1896. This report was transmitted by the Secretary of State to the Secretary of the Interior by letter dated November 30, 1896. The latter communication suggested that an investigation be made of the rights of the Rio Grande Irrigation & Land Co. (Ltd.) and that the Secretary of the Interior decline to grant additional rights of way over public lands for dams and reservoirs under the act of March 3, 1891. A copy of the letter of November 30, 1896, is marked "Exhibit D" and attached hereto.

INITIAL EMBARGO OF DECEMBER 5, 1896

Following the suggestion of the Secretary of State made in letter of November 30, 1896, the Secretary of the Interior on December 5, 1896, addressed a letter of that date to the Commissioner of the General Land Office directing the suspension of action on all applications for rights of way for irrigation purposes over public lands in the Rio Grande Basin in Colorado and New Mexico. By letter dated December 19, 1896, the Secretary of the Interior reported this action to the Secretary of State and commented upon the rights of the Rio Grande Dam & Irrigation Co. A copy of the order of December 5, 1896, marked "Exhibit E" and a copy of the letter of December 19, 1896, marked "Exhibit F" are attached hereto. The order of December 5, 1896, has been modified six times, as will hereafter appear.

FIRST MODIFICATION OF EMBARGO, JANUARY 13, 1897

The Pecos River, flowing through eastern New Mexico, is a tributary of the Rio Grande and was included in the blanket order of December 5, 1896. However, its waters reach the Rio Grande at a point below the irrigable area in the vicinity of Jaurez and therefore could not affect the question under discussion. This fact was brought to the attention of the Secretary of the Interior by letter of January 11, 1897, from the Secretary of State, a copy of which letter, marked "Exhibit G," is attached hereto. Accordingly, on January 13, 1897, the order of December 5, 1896, was modified by the Secretary of the Interior so that it would not apply to the tributaries of the Rio Grande which empty into that river below the point where it becomes the international boundary. A copy of the order of January 13, 1897, marked "Exhibit H," is attached hereto.

NEGOTIATIONS FOR TREATY MEET DIFFICULTY

In letters of December 19, 1896, December 29, 1896, and January 5, 1897, from the Mexican Minister M. Romero to Secretary of State Olney the former expressed approval of the joint commission's report of November 25, 1896, and in letter dated January 30, 1897, the Mexican Minister transmitted to our State Department a draft of proposed treaty following the recommendations of the report of the joint commission, which draft had been approved by the Mexican Government. The position of the United States was expressed in the following paragraph taken from letter of January 4, 1897, from Secretary Olney to the Mexican Minister—

"in preparing to enter into negotiations the department has found the subject embarrassed by greatly perplexing complications arising out of reservoir dams, etc., either already built or authorized through the concurrent action of the Federal and State authorities. Just what legal validity is to be imputed to such grants of authority, or in what way structures completed or begun are to be dealt with, are questions under careful investigation and which must be disposed of before the United States will be in a condition to negotiate."

NAVIGABILITY OF THE RIO GRANDE

The letter of January 11, 1897, from the Secretary of State to the Secretary of the Interior (Exhibit G), in addition to suggesting that the embargo be lifted from the Pecos River, also suggested that the Rio Grande was a navigable river, and that before approving rights of way for dams in the Rio Grande Basin the Secretary of the Interior should assure himself that the erection of such dams would not in any manner interfere with navigation. By letter dated January 13, 1897, the Secretary of State addressed the Secretary of War on the subject of the Rio Grande Dam & Irrigation Co., and suggested that the Secretary of War secure from the Attorney General an opinion as to whether the proposed dam of the company could be constructed without the sanction of the Secretary of War, as directed by the river and harbor act of July 13, 1892 (27 Stat. 88, 100). A copy of the letter of January 13, 1897, marked "Exhibit I," is attached hereto. The Attorney General's opinion was requested by the Secretary of War on February 19, 1897, and again on April 8, 1897. Delay in the matter was caused by a change in national administration. On April 24, 1897, Attorney General Joseph McKenna approved an opinion of that date by Solicitor General Holmes Conrad. This opinion is reported in volume 21, Opinions Attorney General, at page 518. The following is the syllabus from the report:

"The Secretary of the Interior had no power under the act of March 3, 1891, providing for the location and selection of reservoir sites on the public lands of the United States and rights of way for irrigating ditches and canals, to grant a right to construct dams across the Rio Grande for the purpose of checking the flow of water and distributing it for irrigation purposes.

"The control and supervision of the navigable waters of the United States is vested in the Secretary of War.

"The remedy of the United States in case of the erection of a dam across navigable waters is by injunction under section 10 of the act of September 19, 1890, and if the dam has been constructed, also by criminal prosecution."

LITIGATION WITH RIO GRANDE DAM & IRRIGATION CO.

In accordance with the Attorney General's opinion of April 24, 1897, suit by the United States against the Rio Grande Dam & Irrigation Co. was filed in the District Court of the Territory of New Mexico, third district, May 24, 1897. The purpose of the suit was to enjoin the defendant from obstructing the flow of the waters and interfering with the navigable capacity of the Rio Grande, a navigable river, in violations of acts of Congress and contrary to treaty with Mexico. The bill was dismissed by the trial court, and this decision was affirmed by the Territorial supreme court (9 N. Mex. 392). The United States Supreme Court reversed the decree and remanded the cause with directions for "an inquiry into the question whether the intended acts of the defendants in the construction of a dam and in appropriating the waters of the Rio Grande will substantially diminish the navigability of that stream within the limits of present navigability, and if so, to enter a decree restraining those acts to the extent that they will so diminish." (See U. S. v. Rio Grande Dam & Irrigaion Co. (1899) 174 U. S. 690.)

Again, in the trial court the cause came in for hearing, and again a decree against the Government was entered and later affirmed by the Territorial supreme court. Again, the United States Supreme Court reversed the lower court and remanded the case with "direction to grant leave to both sides to adduce further evidence." (See U. S. v. Rio Grande Dam & Irrigation Co. (1902) 184 U. S. 416.)

For a third time the suit was placed on the docket of the New Mexico trial court. The Government amended its complaint, alleging that the statutory period of five years for construction required by the right of way act of March 3, 1891, had run, the requirement had not been met, and the rights, if any, the company had acquired were forfeited. Upon this new allegation the trial court found for the Government, and its decree was thereafter affirmed by the Territorial supreme court (13 N. Mex. 386) and by the United States Supreme Court (See Rio Grande Dam & Irrigation Co. v. U. S. (1909) 215 U. S. 266.) It will be noted that this litigation covered a period of over 12 years. Incidentally, the successors of the Rio Grande Dam & Irrigation Co.—

British interests—are now attempting to secure against the United States in an international tribunal an award of damages because they were prevented from carrying out their proposed irrigation enterprise.

BILLS IN CONGRESS

While the litigation between the United States and the Rio Grande Dam & Irrigation Co. was in progress, various bills providing for the construction of an international dam at El Paso and the distribution of the waters therefrom were introduced in Congress. Typical of these was the bill (S. 3894–H. R. 9710) introduced in 1900. A copy of this bill, marked "Exhibit J," is attached hereto. On December 19, 1900, the Senate Committee on Foreign Relations reported this bill favorably and recommended that it be passed. (See S. Rept. No. 1755, 56th Cong., 2d sess.) However, the bill was not enacted. New Mexico interests were strongly opposed to the plan for an international reservoir at El Paso, as such a reservoir would inundate a large irrigable area in the Mesilla Valley in New Mexico and prevent a much desired further development of that region.

THE NATIONAL IRRIGATION ACT

On June 17, 1902, the national irrigation act became a law (32 Stat. 388). Under this act the Secretary of the Interior was authorized to use certain moneys from public lands to construct and maintain irrigation works in 16 designated States and Territories, of which the Territory of New Mexico was one. The State of Texas was not included in the list, as there were no public lands in that State.

The new United States Reclamation Service in the Geological Survey, organized under said act, began investigations on the Rio Grande March 1, 1903, and the survey of a reservoir site in the vicinity of Elephant Butte was completed in August of that year. Borings for the foundations of the dam were begun in October, 1903, and completed in February, 1904. (See Second Annual Report U. S. Reclamation Service, p. 377; Third Annual Report, pp. 95, 395.) Under date of June 3, 1904, the Mexican minister, M. de Azpiroz, brought the claims of Mexico to the attention of the State Department again, urgently requesting the providing of a water supply or the payment of damages. In letter dated June 27, 1904, from Secretary of State John Hay to Secretary of the Interior Ethan Allen Hitchcock, reference is made to the letter of June 3 from the Mexican minister, and it is suggested that the national irrigation act might be utilized to solve the difficulty. A copy of the letter of June 27, 1904, marked "Exhibit K," is annexed hereto.

PLANS FOR A RECLAMATION SERVICE PROJECT

On November 18, 1904, before the National Irrigation Congress held at El Paso, Engineer B. M. Hall, of the Reclamation Service, presented a paper dealing with Government irrigation on the Rio Grande. He compared the plan for an international dam at El Paso, as proposed in the joint commission's report of November 25, 1896, with the plan for a Federal dam at Elephant Butte in New Mexico. The following is taken from his paper:

> "As mentioned above, Mr. Follett estimates that about 40,000 acres of land had prior rights under the old canals in El Paso Valley and were deprived of irrigation by the act of American citizens on the headwaters, and that something more than one-half of this 40,000 acres lay on the Mexican side of the river. As the restoring of these ancient water rights is the primary object of the proposed expenditure of $2,317,113.36, the cost of project would be $57.92 per acre. However, it will be shown further along in this paper that the proposed reservoir could be made to irrigate 55,000 acres in El Paso Valley, which would put the cost per acre at $42.12, provided the estimate of the commission is a correct one. There is every reason for believing this estimate too low, but aside from the monetary cost per acre for the land to be irrigated, there is another item of cost to be considered. The reservoir would cover 25,565 acres of good valley land with mud and water and would cause marshes to form in the low, flat valley at the head of the lake amounting to perhaps 15,000 acres additional, making a total destruction of about 40,000 acres of land in the Mesilla Valley, which is just as near to El Paso, and just as valuable as any of the land that would be irrigated.
>
> "While the published report of the commission and its engineers plainly sets forth the fact that increased irrigation in Colorado caused shortage of water in Mexico, Texas, and New Mexico, their recommendations not only leave New Mexico out of all the benefits to be derived from a project inaugurated for the purpose of making up this shortage, but give part of her territory to Mexico, cover up another part of it by the proposed reservoir, and distinctly ask that the Government shall prevent the construction of any other large reservoir on the Rio Grande in the territory of New Mexico.
>
> "The only reasonable explanation of these extraordinary recommendations lies in the probable fact the commission had no alternative plan for consideration, and thought the plan recommended was the only possible plan that could be adopted for restoring the water to which Mexico laid claim by virtue of ancient prior use. Indeed, they were confronted at the time with the prospect of an Elephant Butte Dam in New Mexico, not under Government management, but to be constructed, owned, and operated by a stock company of private capitalists, whose plans contemplated the construction of a comparatively low dam without sufficient storage capacity for irrigating a large area above, and having a surplus for Mexico. At that time the United States Government had no reclamation service. Now that conditions have completely changed and there is an alternative plan which claims to be able to accomplish just as much for Mexico and a great deal more for the United States, it becomes necessary to compare these two plans and choose between them. * * *
>
> "The Elephant Butte Dam has the final advantage of being in New Mexico, and subject to the operations of the United States Reclamation Service. The project can be so planned that legislation by Congress can allow New Mexico and Texas to participate. But the extent and manner of this participation is a matter that must be arranged and decided on by Congress and the Department of State. All that the Reclamation Service can do at present is to make plans and estimates for work in the Territory of New Mexico that will not conflict with any action that may be taken by Congress and by the Secretary of State for restoring water to which El Paso Valley, in Texas and Mexico, has laid claim by virtue of ancient prior appropriation and continuous use."

CONGRESS AUTHORIZES CONSTRUCTION OF DAM

By act of February 25, 1905 (33 Stat., 814), Congress extended the provisions of the National Irrigation Act "to the portion of the State of Texas bordering upon the Rio Grande which can be irrigated from a dam to be constructed near Engle, in the territory of New Mexico, on the Rio Grande," and directed that "if there shall be ascertained to be sufficient land in New Mexico and in Texas which can be supplied with the stored water at a cost which shall render the project feasible and return to the reclamation fund the cost of the enterprise, then the Secretary of the Interior may proceed with the work of constructing a dam on the Rio Grande as part of the general system of irrigation, should all other conditions as regards feasibility be found satisfactory." By act of June 12, 1906 (34 Stat., 259), the provisions of the National Irrigation Act were "extended so as to include and apply to the State of Texas."

TREATY OF MAY 21, 1906

Although the third and final decision of the United States Supreme Court in the Rio Grande Dam & Irrigation Co. case was not made until December 13, 1909, the third and final decision of the New Mexico trial court was rendered on May 21, 1903. Subsequent acts of the Federal Government apparently were based on the idea that the decision of May 21, 1903, would not be disturbed.

The negotiations which had been carried on between the United States and Mexico over a period of about a quarter of a century culminated in the treaty of May 21, 1906 (34 Stat. 2953), between the two countries. Under this treaty the United States agreed to deliver to Mexico 60,000 acre-feet of water per annum from the proposed Federal Elephant Butte Reservoir, while Mexico waived all claims for damages and all claims to any other water from the Rio Grande between the Acequia Madre, at El Paso, and Fort Quitman, Tex. A copy of the treaty, marked "Exhibit L," is attached hereto.

By act of March 4, 1907 (34 Stat. 1357), the sum of $1,000,000 was appropriated from the Treasury toward the construction of the dam required by the treaty, the remaining cost of the dam to be paid from the reclamation fund and collected from the landowners under the Rio Grande project.

While the construction of a division—Leasburg Unit—of the Rio Grande irrigation project was authorized by the Secretary of the Interior on December 2, 1905, the construction of the Elephant Butte Reservoir was not authorized until May 23, 1910, and was not completed until May 13, 1916, 10 years after the treaty was signed.

THE RIO GRANDE FEDERAL IRRIGATION PROJECT

The Elephant Butte Dam, constructed by the Reclamation Service, is 1,585 feet long not including the spillway, 306 feet high from the bedrock foundation to the parapet, and contains 611,700 cubic yards of concrete masonry. In addition to the main structure it was necessary to build an earth-and-rock-fill embankment 2,000 feet long containing 165,700 cubic yards. The reservoir is 45 miles in length with an original storage capacity of 2,638,860 acre-feet of water. This reservoir supplies the 60,000 acre-feet of water provided by the treaty of May 21, 1906, for the irrigation of approximately 25,000 acres of land in the Republic of Mexico, and in addition is intended to irrigate approximately 83,000 acres of land in the Elephant Butte irrigation district of New Mexico and approximately 67,000 acres of land in the El Paso County Water Improvement District No. 1 of Texas.

FEDERAL APPROPRIATIONS OF WATER FROM RIO GRANDE

By instrument dated January 23, 1906, and filed in the office of the Territorial engineer of New Mexico on the same day, the United States gave notice of appropriation of 730,000 acre-feet of water per annum from the Rio Grande for the proposed Government project. A copy of this notice, marked "Exhibit M," is attached hereto.

By instrument dated April, 1908, and filed in the office of the Territorial engineer of New Mexico on April 8, 1908, the United States gave notice of appropriation of all the unappropriated water of the Rio Grande for the said project. A copy of this notice marked "Exhibit N" is attached hereto.

SECOND MODIFICATION OF EMBARGO, MAY 25, 1906

By order dated May 25, 1906, the Secretary of the Interior modified the embargo on the upper Rio Grande so as to permit approval of rights of way over public lands for irrigation purposes initiated by actual field surveys based upon notices of appropriation of water filed under the laws of Colorado prior to March 1, 1903. This action was not taken until it had been approved by the State Department in letters of March 7, 1906, and May 22, 1906, to the Secretary of the Interior. A copy of the order of May 25, 1906, marked "Exhibit O," is attached hereto.

THIRD MODIFICATION OF EMBARGO, JULY 10, 1906

On July 10, 1906, by letter of that date to the Commissioner of the General Land Office, the embargo was modified by providing that in the future all applications for rights of way should be submitted to the Director of the Geological Survey, "to ascertain whether they will conflict with the obligations of the United States under the treaty with Mexico, recently ratified, or with the Rio Grande or any other project of the Reclamation Service." A copy of the order of July 10, 1906, marked "Exhibit P," is attached hereto.

FOURTH MODIFICATION OF EMBARGO, SEPTEMBER 27, 1906

On September 27, 1906, with the approval of the State Department, the Acting Secretary of the Interior issued an order revoking all prior orders affecting the embargo on the upper Rio Grande in view of the settlement of the water-right question between the United States and Mexico by treaty of May 21, 1906. It was further ordered that all applications involving the use of the waters of the Rio Grande in Colorado and New Mexico should be submitted for a determination by the Geological Survey to ascertain whether favorable action thereon would interfere with any project of the Reclamation Service or with the obligations of the United States under the treaty. A copy of this order, marked "Exhibit Q," is attached hereto.

FIFTH MODIFICATION OF EMBARGO, APRIL 25, 1907

The obligations of the United States under the treaty, the fulfillment of which depended upon the construction and utilization of the Elephant Butte Reservoir, made it necessary for the Secretary of the Interior to determine a policy in dealing with applications for rights of way over the public lands for irrigation purposes, and on April 25, 1907, Secretary of the Interior J. R. Garfield approved a recommendation of the Reclamation Service providing that—

> "until the development of irrigation on the upper Rio Grande, in the State of Colorado and the Territory of New Mexico, shall furnish sufficient data to determine the effect of the storage and diversion of water in that vicinity upon the water supply for the Engle Reservoir of the Rio Grande project, no further rights of way be approved which involve the storage or diversion of the waters of the upper Rio Grande and its tributaries, except applications of two kinds: First, those in connection with which there is a showing that the rights of the parties were initiated prior to the beginning of active operations by the Reclamation Service for the Rio Grande project, namely, March 1, 1903; second, applications which involve the diversion or storage of not exceeding 1,000 acre-feet of water per annum.
>
> "When it becomes possible to determine the effect of the approved applications upon the water available for storage for the Rio Grande project it may be possible to allow the use of rights of way to a greater extent than is now proposed."

A copy of the order of April 25, 1907, marked "Exhibit R," is attached hereto.

SIXTH MODIFICATION OF EMBARGO, MARCH 2, 1923

By letter dated March 2, 1923, the Director of the Reclamation Service reviewed the history of the embargo and recommended that that service be authorized to—

> "negotiate for the release of specific areas of public land for purposes of water storage under conditions that will best conserve and utilize the water resources and will protect vested rights in all parts of the Rio Grande Basin, such negotiations to be subject to the approval of the Secretary of the Interior, and, prior to such approval, to be subject to the scrutiny of all interested parties."

This recommendation was approved by Secretary of the Interior Albert B. Fall on the date of the letter. A copy of this letter, marked "Exhibit S," is attached hereto.

RIGHTS OF WAY IN COLORADO WHICH HAVE BEEN APPROVED

While the embargo applies to New Mexico as well as to Colorado, there are few irrigation possibilities in the former State that could conflict with the embargo. From a compilation made from the records of the General Land Office in February, 1923, it appears that since the embargo went into effect irrigation rights of way over public lands in the Rio Grande Basin in Colorado have been approved by the Government as follows:

Applicant:	Capacity, acre-feet
Alta Lake Reservoir	414
Balmon Reservoir	40
Botefur Reservoir	8
Bristol Head Reservoir (2)	569
Clemmons & Bielser ditch	
Cole Reservoir	19
Colton Creek Air Line ditch	
Colton Creek Reservoir	76
Continental Reservoir	38,196
Cove Lake Reservoir	10,683
Davis Bros. ditch	
Deer Lake Reservoir	203
Haton Reservoir	95
Lost Lake Reservoir	194
Poage Reservoir	260
Pond Lily Reservoir	142
Regan Reservoir	1,375
Rio Grande Reservoir & Ditch Co	43,567
Road Canyon Reservoir	915
San Antonia Reservoir. (See Alta Lake.)	
San Isabel Reservoir (2)	451
San Jose ditch No. 2	
San Luis Valley Reservoir	3,283
Santa Maria Reservoir. (See Rio Grande.)	
Short Creek Reservoir	112
Sierra Blanca Reservoir	184
Swift Co. Reservoir	139
Tabor ditch No. 1	
Tabor ditch No. 2	
Taos Valley Canal	
Terrace Reservoir	13,000
Wild Cherry Reservoir	684
Total	114,609

OBJECTIONS TO THE EMBARGO

Frequently, since the embargo was made effective in 1896, protests have been filed against its continuance. These have come principally from landowners in the San Luis Valley, in the State of Colorado, where the burden of the embargo is most keenly felt.

On the part of the complainants it has been urged (a) that the embargo is a restriction on the use of water and is in conflict with the enabling act of March 3, 1875 (18 Stat. 474), under which Colorado was admitted to the Union; (b) that the right of way act of March 3, 1891 (26 Stat. 1095), makes a grant, and the Secretary of the Interior has no authority to withhold this grant, as demanded by the embargo; and (c) that diversions in Colorado will not adversely affect the Government project.

On the other hand, the United States contends (a) that the enabling act of March 3, 1875, reserves to the Federal Government full authority over its public lands; (b) that the right of way act of March 3, 1891, gives the Secretary of the Interior a discretion to refuse to approve an application for a right of way when in his opinion it is contrary to the public interest to do so; and (c) that as a condition precedent to the approval of any application it must appear clear that the Government project will not be injured thereby. The subject is discussed at some length by First Assistant Secretary Pierce in the Wagon Wheel Gap Reservoir case (39 L. D. 104).

RIO GRANDE COMMISSION

Complaints against the embargo finally brought forth the suggestion that a commission should be named to make a study of the water supply and draft a form of compact between the States affected under which an equitable allocation of the use of the waters of the Rio Grande would be made to each State. This would follow the precedent of the Colorado River compact signed at Santa Fe, N. Mex., November 24, 1922.

On March 12, 1923, the State of New Mexico enacted a law (N. Mex. Sess. Laws, 1923, p. 175) authorizing the appointment of a representative on such a commission. Under this act the governor appointed Mr. J. O. Seth, an attorney at law, of Santa Fe, N. Mex. A copy of the statute, marked "Exhibit T," is attached hereto.

On March 20, 1923, the State of Colorado enacted a statute (Colo. Sess. Laws, 1923, p. 702) for a similar purpose, and under its authority the governor appointed Mr. Delph E. Carpenter, an attorney at law of Greeley, Colo., to represent that State. A copy of the act, marked "Exhibit U," is attached hereto.

In December, 1923, President Coolidge named Mr. Herbert Hoover as the representative of the United States on the Rio Grande Commission.

It is anticipated that at the January, 1925, session of the Texas Legislature the governor of that State will be authorized to name a representative on the commission.

Dated November 11, 1924.

EXHIBIT A

(Copy of concurrent resolution of April 29, 1890)

Concurrent resolution concerning the irrigation of arid lands in the valley of the Rio Grande River, the construction of a dam across said river at or near El Paso, Tex., for the storage of its waste waters, and for other purposes.

Whereas the Rio Grande River is the boundary line between the United States and Mexico; and

Whereas by means of irrigating ditches and canals taking the water from said river and other causes the usual supply of water therefrom has been exhausted before it reaches the point where it divides the United States of America from the Republic of Mexico, thereby rendering the lands in its valley arid and unproductive, to the great detriment of the citizens of the two countries who live along its course; and

Whereas in former years annual floods in said river have been such as to change the channel thereof, producing serious avulsions and oftentimes and in many places leaving large tracts of land belonging to the people of the United States on the Mexican side of the river and Mexican lands on the American side, thus producing a confusion of boundary, a disturbance of private and public titles to lands, as well as provoking conflicts of jurisdiction between the two Governments, offering facilities for smuggling, promoting the evasion and preventing the collection of revenues by the respective countries; and

Whereas these conditions are a standing menace to the harmony and prosperity of the citizens of said countries, and the amicable and orderly administration of their respective Governments: Therefore,

Resolved by the Senate (the House of Representatives concurring), That the President be requested, if in his opinion it is not incompatible with the public interests, to enter into negotiations with the Government of Mexico with a view to the remedy of all such difficulties as are mentioned in the preamble to this resolution, and such other matters connected therewith as may be better adjusted by agreement or convention between the two Governments. And the President is also requested to include in the negotiations with the Government of Mexico all other subjects of interest which may be deemed to affect the present or prospective relations of both Governments.

EXHIBIT B

(Sections 18, 19, 20, and 21 of the act of March 3, 1891 (26 Stat. 1095), entitled "An act to repeal timber-culture laws, and for other purposes," granting a right of way through the public lands and reservations of the United States for the use of canals, ditches, or reservoirs.)

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and 50 feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within 12 months after the location of 10 miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands within 12 months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats of said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of, subject to such right of way. Whenever any person or corporation in the construction of any canal, ditch, or reservoir injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir to the extent that the same is not completed at the date of the forfeiture.

SEC. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

EXHIBIT C

(Letter from the Mexican minister, M. Romero, to Secretary of State Richard Olney)

LEGATION OF MEXICO,
Washington, October 21, 1895.

MR. SECRETARY: I have addressed your department on various occasions, communicating the instructions which I have received from my Government to endeavor to secure the adoption of an arrangement designed to remedy the evils which are suffered by the inhabitants of the Mexican bank of the Rio Grande from Paso del Norte to a distance of about 200 kilometers below.

Paso del Norte and the adjacent region down the river are situated in the center of the dry zone and consequently can not depend upon the rains for their agricultural operations, but are obliged to depend upon irrigation. From a report of the Weather Bureau at El Paso, Tex., dated August 25, 1894, a copy of which is herewith inclosed, it appears that the total rainfall registered from August 15, 1893, to August 14, 1894, was 4.97 inches, or next to nothing at all.

The city of Paso del Norte has been in existence for more than three hundred years, and during (almost) all that time its people have enjoyed the use of the water of the Rio Grande for the irrigation of their lands; and as that city and the districts within its jurisdiction did not need more than 20 cubic meters of water per second, which is almost an infinitesimal portion of the amount of water which flowed down the river, even in times of the severest drought, they had sufficient water for their crops until about ten years ago, when a great many trenches were dug in the State of Colorado (especially in the St. Louis Valley) and in the Territory of New Mexico, through which the Rio Grande and its affluents flow. The volume of water thus taken has so greatly diminished that which is brought by the river to Paso del Norte that, when the rains are not very abundant, there is a scarcity of water from the 15th of June of one year till the month of March of the next, which is the very time when water is most needed for the crops.

In the year 1894 the river became dried up entirely by the 15th of June, and only when it rained in New Mexico was there any water in it, and that lasted, of course, for but a short time. In that year the farmers were unable to raise any Indian corn, vegetables, or grapes, and the scarcity of water was such that even the fruit trees began to wither.

This state of things has naturally reduced the price of the land, which was good until that time, to an extremely low figure, and has diminished the population of that region very considerably. In 1875 there was at Paso del Norte, Zaragoza, Tres Jacales, Guadalupe, and San Ignacio, a population of about 20,000, which, in 1894, was reduced to half that number. Farms no longer produced enough to support their owners, and the situation of the people is wretched in the extreme, because, as they are unable to raise vegetables or other articles necessary to support life, they are obliged to send for them a distance of from 500 to 1,000 miles, their cost being thus increased while the people's means of paying for what they need are greatly diminished.

The United States Congress recognized the serious injury suffered by the Mexicans in a concurrent resolution approved April 29, 1890, whereby it recommended to the President of the United States to enter into negotiations with the Mexican Government with a view to deciding upon such means as might tend to remedy the difficulties occasioned by the scarcity of water in the Rio Grande from the point where it serves as the boundary between Mexico and the United States of America.

The Mexican Government, to which the United States minister in Mexico communicated the aforesaid resolution in pursuance of the instructions of his Government, authorized me to take steps here to secure the arrangement proposed in the resolution, and I so informed the Department of State in a note dated October 26, 1893. It has not, however, thus far been possible to make much progress in this matter.

The Government of Mexico thinks that according to Article VII of the treaty of Guadalupe Hidalgo of February 2, 1848, the inhabitants of one country can not, without the consent of the other, build any

works that obstruct or impede navigation in international rivers, and nothing could impede it more absolutely than works which wholly turn aside the water of those rivers. It is true that Article IV of the treaty of Mesilla of December 30, 1853, annulled Article VII of the treaty of Guadalupe Hidalgo, but at the same time it left its stipulations in force, as far as the Rio Grande is concerned, from the point where that river begins to be the boundary line between the two countries, and, moreover, by Article V of the convention of November 12, 1884, the right of both countries to that river was again recognized, and it was again stipulated that one could not construct any works that obstructed navigation therein without the consent of the other.

From a report of the Assistant Quartermaster General addressed to the General in Chief of the United States Army and dated Brazos de Santiago, Tex., September 5, 1850, it appears that Captain Lowe, United States Army, ascended it with a vessel, reaching a point several kilometers above Paso del Norte, which shows that it was navigable at that time.

Still, even supposing, without admitting it, that the Mexican Government's interpretation of the treaties were not well founded, and even if there were no stipulation on this subject between the two countries, the principles of international law would form a sufficient basis for the rights of the Mexican inhabitants of the bank of the Rio Grande. Their claim to the use of the water of that river is incontestable, being prior to that of the inhabitants of Colorado by hundreds of years, and, according to the principles of civil law, a prior claim takes precedence in case of dispute.

The circumstance that that river serves as the boundary between the two countries, and that it is consequently an international river, gives it a special character, which considerably restricts the freedom and rights of the inhabitants of both banks, and does not permit them to construct works that reduce the volume of water in the river to such an extent that it is no longer navigable, and even, at last, is dried up entirely.

I should fear to cast a reflection upon your knowledge of such matters if I were to quote the various doctrines laid down by writers on international law which are applicable to the present case and which support my asseverations.

These considerations, and the terrible situation in which the inhabitants of Paso del Norte and the neighboring districts now are, render the Government of Mexico exceedingly desirous to conclude an arrangement with that of the United States on this subject as speedily as may be possible; and I therefore repeat the request which I have verbally made on several occasions, viz, that the antecedents may be examined, and that the necessary steps may be taken to effect an arrangement with the Government of Mexico that will facilitate the fulfillment of international obligations and remedy existing evils as far as possible.

Be pleased to accept, etc.

M. ROMERO.

EXHIBIT D

(Letter dated November 30, 1896, from Secretary of State Richard Olney to Secretary of the Interior D. R. Francis)

DEPARTMENT OF STATE,
Washington, November 30, 1896.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to invite your attention to the inclosed copy of a letter dated November 17, 1896, and accompanying papers from Col. Anson Mills, of the United States Army, who is a member of a joint commission appointed by the United States and the Republic of Mexico to report upon the best and most feasible mode—whether by a dam across the Rio Grande River near El Paso, Tex., or otherwise—of so regulating the use of the waters of the Rio Grande River as to secure to each country and its inhabitants their legal and equitable rights and interests in said waters for irrigation purposes.

This examining board was appointed in pursuance of a concurrent resolution of Congress, approved April 29, 1890, which recites the fact that by reason of the irrigating ditches and canals leading from the upper waters of the Rio Grande in the State of Colorado and Territory of New Mexico, an insufficient quantity of water remains in the river to irrigate the land adjacent to the river after it leaves New Mexico, thereby rendering the lands arid and unproductive, to the great detriment of the citizens of both countries who live along the Rio Grande below the line of New Mexico. The resolution then authorizes the President to enter into negotiations with the Government of Mexico with a view to remedying this condition. I inclose a copy of the resolution.

The duty imposed upon this board of examiners was to ascertain—

(1) The amount of water taken from the Rio Grande by the irrigation canals constructed in the United States.

(2) The average amount of water in said river year by year before the construction of said irrigation canals and since their construction.

(3) The best and most practicable mode of regulating the use of the waters of the Rio Grande so as to secure to each country and to the border landowners on both sides of the river their legal and equitable rights and interests in said waters.

August 4 last the Mexican minister to the United States transmitted to this department a copy of a petition forwarded by the inhabitants of the city of Paso del Norte, Mexico, calling attention to the distressing situation in the towns on the Mexican side of the Rio Grande caused by the immoderate use of the waters of the river for irrigation purposes by the adjacent owners in the United States above the boundary line. This petition states that the efforts of the two Governments to remedy this condition will be fruitless if, in addition to the 40 dams already existing in Colorado, the Rio Grande Irrigation & Land Co. (Ltd.) should be permitted to construct, as it proposes, a dam across the Rio Grande at Elephant Butte, N. Mex. The Mexican minister said that his Government regarded this petition as well founded, and requested the United States to adopt such measures as may be in its power to put a stop to the works undertaken by the Rio Grande Irrigation & Land Co. (Ltd.) until the effect of that company's proposed works upon the practicability of the international scheme could be considered by the examining board and determined upon to the satisfaction of the two Governments. A copy of the Mexican petition was sent to Colonel Mills for his suggestions. The inclosed letter of November 17, 1896, to which your attention is invited, is his reply.

Colonel Mills says that the proposed dam and reservoir of the Rio Grande Irrigation & Land Co. (Ltd.) is located about 125 miles above El Paso, and that it will be useless at that distance to furnish water for irrigation in the vicinity of El Paso and below. He says, furthermore, that he is informed that the same company has on file in the Interior Department applications for two additional dams and reservoirs—one at Rincon, N. Mex., about 100 miles above El Paso, and another at Fort Seldon, about 60 miles above; also that at the latter place a man named Ernest Dale Owen has applied for permission to erect a dam and reservoir.

It is understood that the Rio Grande Irrigation & Land Co. (Ltd.) acquired its right to build the reservoir it is now constructing from a corporation existing under the laws of New Mexico under the name of the Rio Grande Dam & Irrigation Co., to which company the right of way for the construction of the storage dam at Elephant Butte was granted by the Secretary of the Interior February 1, 1895, under the provisions of the act of March 3, 1891.

Colonel Mills gives it as his opinion that the probable flow of water in the river will be sufficient to supply the proposed international reservoir after deducting for all the small reservoirs now in operation and likely to be constructed above, but that the flow will not be sufficient to supply the proposed international reservoir and allow for the supply of the proposed reservoir of the Rio Grande Irrigation & Land Co. (Ltd.) at Elephant Butte or any other reservoirs upon the same scale, and that the scheme of building an international reservoir will have to be abandoned unless the completion of the works proposed by the Rio Grande Irrigation & Land Co. (Ltd.) and by Owen is prevented. Colonel Mills' letter suggests that the rights obtained from the United States by the Rio Grande Irrigation & Land Co. (Ltd.) may be subject to conditions in favor of the rights of those who live below, which, on a proper showing, might enable the Secretary of the Interior to cancel the grant made to that company. The other applications for permission to build reservoirs for storage of the waters of the Rio Grande mentioned by Colonel Mills have not, it is assumed, yet been finally acted upon.

The circumstances being as above stated, I desire to suggest the propriety of declining to grant any additional rights to build dams and reservoirs as applied for—certainly until the negotiations now pending between Mexico and the United States have reached a final conclusion. I desire also to suggest that an investigation may be made of the rights already granted to the Rio Grande Irrigation & Land Co. (Ltd.) and of any acts or proceedings done by that company by virtue of such rights, with a view to ascertaining whether there is any legal power to cancel those rights, and, if the power exists, whether it can be exercised without injustice to the parties directly and indirectly interested in that enterprise.

With a request for your earliest practicable attention to this matter, I have the honor to be, sir, your obedient servant,

RICHARD OLNEY.

EXHIBIT E

(Order, dated December 5, 1896, of the Secretary of the Interior, placing the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
Washington, December 5, 1896.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Your office is hereby directed to suspend action on any and all applications for right of way through public lands for the purpose

of irrigation by using the waters of the Rio Grande River or any of its tributaries in the State of Colorado or in the Territory of New Mexico until further instructed by this department.

Very respectfully,

D. R. FRANCIS, *Secretary.*

EXHIBIT F

(Letter dated December 19, 1896, from the Secretary of the Interior to the Secretary of State)

DEPARTMENT OF THE INTERIOR,
Washington, December 19, 1896.

The honorable the SECRETARY OF STATE.

SIR: I have the honor to submit, in response to your communication of November 30, the inclosed paper, prepared under the direction of the Assistant Attorney General, which fully sets forth the claims and contentions of the Rio Grande Dam & Irrigation Co., and discusses at considerable length the laws of the State of Colorado and Territory of New Mexico relating to waters, and the acts of Congress and rulings of this department relating to irrigation.

The application of the Rio Grande Dam & Irrigation Co. was approved by my predecessor on the 1st day of February, 1895. In my opinion I have no right under the law to revoke this approval. It has been decided by the Supreme Court of the United States in the case of Noble *v.* Union River Logging Railroad Co. (147 U. S. 165) that the approval by the Secretary of the Interior of a right of way for railroad purposes over the public land can not be revoked by his successor, and upon the principle therein declared I deem it beyond my authority to revoke my predecessor's approval of the map filed by the Rio Grande Dam & Irrigation Co.

Assuming that I had such power, I submit to you whether or not the exercise of it would be proper in view of the opinion of the Attorney General of your department under date of December 12, 1895. (21 Op. Att. Gen., p. 274.)

It is not the duty of this department to protect the citizens of the United States against unlawful appropriation of the waters of the States and Territories by the inhabitants thereof, and if no treaty obligations of the Government are involved, I do not believe that I should assume to interfere.

Since the receipt of your communication, complaints have been made to this department by parties now having applications for irrigation privileges pending for the vacation of my order of December 6 upon the ground that the effect of such order is to imperil their rights by subordinating them to the claims of persons who may hereafter, for lawful or nefarious purposes, enter lands along the rights of way applied for. Very grave inconvenience would arise if such claims are filed, and I therefore submit for your consideration whether or not there is further need for continuing the suspension heretofore declared.

Immediately upon receipt of your communication I addressed to the Commissioner of the General Land Office directions that he suspend all applications for right of way through the public lands for the purposes of irrigation by using the waters of the Rio Grande River or any of its tributaries in the State of Colorado or the Territory of New Mexico until further instructed by this department. A copy of said order is hereto attached.

Very respectfully,

D. R. FRANCIS, *Secretary.*

EXHIBIT G

(Letter of January 11, 1897, from the Secretary of State to the Secretary of the Interior)

DEPARTMENT OF STATE,
Washington, January 11, 1897.

SIR: In your letter of December 19, 1896, relative to the reservoir which the Rio Grande Dam & Irrigation Co., or another corporation claiming the rights of that company, intends to build at Elephant Butte, N. Mex., you informed me that you had, in compliance with my suggestion of November 30, 1896, directed the Commissioner of the General Land Office to suspend action on any and all applications for right of way through public lands for the purpose of irrigation by using the waters of the Rio Grande River or any of its tributaries in the State of Colorado or in the Territory of New Mexico until further instructions from you. The request of this department, upon which your order was based, was made at the suggestion of Col. Anson Mills, a copy of whose letter, dated October 29, 1896, was transmitted to you October 31 of that year.

The attorneys of parties who have made application to your department for the approval of rights of way to build dams and reservoirs on the Pecos River have made verbal complaint to this department that the order has been applied by the General Land Office to the river Pecos, as well as to the tributaries of the Rio Grande which join that river above El Paso. Upon receipt of this complaint I made inquiry of Colonel Mills as to whether his request that action be suspended on all applications for permits to build additional dams across the Rio Grande or its tributaries was intended to apply to the Pecos, and whether the building of additional reservoirs on that river would affect the plan which this department has under consideration of building an international reservoir at El Paso. He has replied, under date of January 7, 1897, that he had not intended to stop the granting of permits for reservoirs on the Pecos or on any stream which empties into the Rio Grande below the proposed location of the international reservoir. He does not believe that further use of the waters of the Pecos for irrigation purposes will affect the international question pending between the United States and Mexico, as that river falls into the Rio Grande at a point where the diminution of its waters will have little, if any, perceptible effect upon the volume passing downward from that point.

I have the honor, therefore, to suggest that the order to the Commissioner of the General Land Office, referred to in your letter to me of December 19, 1896, be limited in its application to the tributaries of the Rio Grande which pour into that river above the point where it becomes the boundary between the United States and Mexico, and that it be no longer applied to applications for dams and reservoirs on the Pecos.

There is another phase of this question which, it has occurred to me, may have an important bearing upon the rights of parties now applying for permission to erect dams across the Rio Grande, and also upon the international question involved. I have information which indicates that the Rio Grande River in some parts above the international boundary line is and has been used as a waterway for navigation between the United States and Mexico and possibly between the State of Colorado and the Territory of New Mexico. If it be true that this stream in its natural condition is capable of use for the transportation of commerce between two States of the Union or between the United States and a foreign country, the river is a navigable water of the United States and as such subject to the laws of Congress enacted for the maintenance, protection, and preservation of the navigable waters of the United States. One of the principal matters of complaint by Mexico is that the diversion of the upper waters of the Rio Grande for irrigation purposes has affected the usefulness of that stream as a waterway for commerce.

The Attorney General, in his opinion of December 12, 1895 (21 Op. 274), held that the river was not navigable above the boundary in the sense of the treaty between the United States and Mexico; but the question here is whether it is navigable within the meaning of the laws of the United States. The conditions of navigability within the meaning of our statutes are well defined in the decisions of the Federal courts. Many of these are referred to in 10 Op. Att. Gen. 101.

If the Rio Grande River is in the part under consideration a navigable water of the United States, the question arises whether the erection of the proposed dams across it will not interfere with its navigability and bring those dams within the prohibition of the statutes enacted for the preservation of navigable waters. I refer particularly to the act of September 19, 1890, sections 7 and 10 (26 Stat. L. 426), and to the act of July 13, 1892, section 3 (27 Stat. L. 110). It is true that the enforcement of these statutes devolves primarily upon the Secretary of War and that at first view it may not appear to be a part of the duty of the Secretary of the Interior to take care of the navigability of the streams on the public lands, but in a case where the act of the Secretary of the Interior approving the right of way to build a dam across a river on the public lands may operate, as it must if the river is a navigable water of the United States, as a grant of Executive sanction to a proceeding which is in violation of law, it would seem to be the duty and within the jurisdiction of the Secretary of the Interior to ascertain before sanctioning the erection of the dam whether it would constitute an obstruction to a navigable water of the United States and be within the prohibition of the statutes.

As the erection of the dams under consideration is now the subject matter of a complaint of the Government of Mexico, I feel it my duty to lay this question before you in order that you may determine in the first place whether you have the power and, in the second place, whether it is a part of your duty to withhold approval of the pending applications for rights of way to build dams across the Rio Grande River and its tributaries above the boundary line until the applicants have satisfied you that the river in the part affected by these dams is not a navigable water of the United States or that the dams will not interfere with the navigation of the river. It must be observed that the obstruction to navigation may result not only from the intervention of the dams across the course of the river but also from the diversion of the waters, leaving an insufficient quantity below the dam for the purposes of navigation.

I have, etc.,

RICHARD OLNEY.

EXHIBIT H

(Order, dated January 13, 1897, of the Secretary of the Interior, modifying the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
Washington, January 13, 1897.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: By departmental letter of December 5, 1896, you were directed to suspend action on all applications for right of way for irrigation purposes by the use of the waters of the Rio Grande or any of its tributaries in Colorado or New Mexico till further instructed.

I now hereby modify the above order by limiting its application, so far as the tributaries of the Rio Grande are involved, to those tributaries which empty into that river above the point where it becomes the boundary between the United States and Mexico.

Very respectfully,

D. R. FRANCIS, *Secretary.*

EXHIBIT I

(Letter dated January 13, 1897, from the Secretary of State to the Secretary of War)

DEPARTMENT OF STATE,
Washington, January 13, 1897.

The honorable the SECRETARY OF WAR.

SIR: August 4, 1896, the Mexican minister in Washington presented to this department the inclosed petition from Mexican citizens in and about Paso del Norte, Mexico, protesting against the immoderate use of the waters of the Rio Grande River and its tributaries by residents of Colorado and New Mexico. The Mexican minister called attention to article 7 of the treaty of Guadalupe Hidalgo, of February 2, 1848; to article 1, last clause, of the treaty of December 30, 1853; to article 8 of the convention of November 12, 1884; and to article 5 of the convention of March 1, 1889, between the United States and Mexico, and relying upon those treaty provisions, requested that the United States Government prevent the erection and operation of a dam by a company known to the complainants as the Rio Grande Irrigation Co.," at Elephant Butte, N. Mex., about 125 miles above Paso del Norte, designed to store all the surplus waters of the river and turn it into irrigating ditches and canals.

The complaint of Mexico was sent August 8, 1896, to Col. Anson Mills, of the United States Army, who was then engaged, under the direction of this department, in an investigation of the volume of water in the Rio Grande and the feasibility of a plan under consideration by both Governments of erecting an international reservoir. Colonel Mills reported November 17, 1896, the erection of the dam at Elephant Butte and of other dams below there, which the same company contemplated building, would stop practically all the water coming into the Rio Grande above those points. The complaint and Colonel Mills's report were referred to the Secretary of the Interior November 30, 1896, with a view to ascertaining whether there was any legal power to cancel the rights claimed by the said irrigation company, and if the power to cancel existed, whether it could be exercised without injustice to the parties directly or indirectly interested in the enterprise. The Secretary of the Interior had been previously requested to suspend temporarily all applications for rights of way to build dams across the river in all pending cases. December 5, 1896, he suspended the applications not already approved, but in a letter of December 19, said, with reference to the dam at Elephant Butte to be built by the corporation referred to in the Mexican complaint, the proper name of which is "The Rio Grande Dam & Irrigation Co.," that his predecessor had approved the application of that company for a dam and reservoir at Elephant Butte, and that he had no power to revoke his predecessor's action. The law under which the Secretary of the Interior acts in approving rights of way and maps for dams and reservoirs on public lands is contained in sections 18 to 21 of the act of March 3, 1891. (26 Stat. L. 1095, 1101, and 1102.)

The Secretary of the Interior is, for the reason above given, powerless to intervene or inquire further into the lawfulness of the proposed dam across the Rio Grande at Elephant Butte. The act of July 13, 1892 (27 Stat. L. 88–100), provides, however, in section 3, amending section 7 of the act of September 19, 1890:

> "That it shall not be lawful to build any wharf, pier, dolphin, boom, dam, weir, breakwater, bulkhead, jetty, or structure of any kind outside established harbor lines, or in any navigable waters of the United States where no harbor lines are or may be established, without the permission of the Secretary of War." * * *

As the proposed erection of this dam across the Rio Grande at Elephant Butte has given rise to an important and international question, I have the honor to inquire whether the parties engaged in this enterprise, or others whose rights they enjoy, have obtained from you, as Secretary of War, the permission required by the act first above quoted. If your permission has not been obtained for the placing of this obstruction across the Rio Grande River, I have the honor to request that you will ascertain whether the river in the parts which will be affected by the dam and the diminution of the volume of water consequent upon its erection is not a navigable water of the United States within the meaning of the statutes above quoted, so as to make your sanction a necessary prerequisite to the lawful erection of the dam. I have received information tending to show that the Rio Grande River is navigable for commercial purposes between the United States and Mexico, and possibly between the State of Colorado and the Territory of New Mexico. It probably will not float water craft of great size, but I understand that it has been used in the timber commerce of the country, and is, in its natural state, capable of regular, periodical, if not perennial, use as a waterway for commercial traffic between the two States of the Union or between the United States and a foreign country. If that be true, the river is a navigable stream of the United States within the meaning of the laws for the protection of such waters.

In case it should be ascertained as a fact that the Rio Grande Dam & Irrigation Co., or persons exercising the rights obtained by that company, are without the permission required by the act of July 13, 1892, building or about to build a dam across a navigable river of the United States in a manner that will obstruct or impair the use of that river as a highway for commerce between the United States and a foreign country, or between States of the Union, I have the honor to request that you will adopt such measures as are most effective to open the river and keep it open to such navigation as it is naturally capable of affording for commercial traffic between the States or between any portion of the United States and Mexico.

Section 10 of the act of September 19, 1890, is a general provision enforceable in the courts under the direction of the Attorney General of the United States, and his aid would necessarily be invoked by you should you determine to put this provision of law in force against the Rio Grande Dam & Irrigation Co.'s obstruction of the river at Elephant Butte. In this connection I desire to call your attention to an opinion of the Attorney General delivered December 12, 1895 (20 Op. Atty. Gen. 274), in which he holds that the Rio Grande is not a navigable river above a point 150 miles below Paso del Norte in so far as the treaty obligations of the United States with Mexico are concerned. He did not consider the question whether the river where it lies wholly in the United States is a navigable water of the United States within the meaning of the Federal Statutes. This latter question is, I believe, a new one, dependent upon facts not yet fully ascertained, facts which I have no doubt your department can readily obtain and furnish to the Attorney General in case they, in your opinion, justify or require the intervention of his office.

To put you in a more complete possession of the facts relating to the dam at Elephant Butte, I inclose copy of the letter of the Secretary of the Interior, dated December 19, 1896, referred to above, and of the accompanying report of the assistant attorney general for the Interior Department. From these papers it appears that the Secretary of the Interior has acted upon the assumption that the Rio Grande River above the boundary line is not a navigable river of the United States, without requiring proof or otherwise ascertaining that it is not navigable.

I have the honor to be, sir, your obedient servant,

RICHARD OLNEY.

EXHIBIT J

(Bill to provide for an international dam and distribution of waters of Rio Grande, introduced in Congress in 1900)

A bill to provide for the equitable distribution of the waters of the Rio Grande River between the United States of America and the United States of Mexico and for the purpose of building an international dam and reservoir on said river at El Paso, Tex.

Whereas the Republic of Mexico has made reclamation of the United States to the Secretary of State, through its legation in Washington, for a large indemnity for water alleged to have been taken and used by the citizens of the United States in Colorado and New Mexico, on the headwaters of the Rio Grande to which citizens of Mexico had right by prior appropriation, in violation of the spirit of article 7 of the treaty of peace of Guadalupe Hidalgo; and

Whereas an investigation directed jointly by the State Departments of the two Republics and carried out by the International Boundary Commission, organized under the convention of March 1, 1889, discovered the fact that the flow of the river has gradually diminished for the past 15 years in an increasing ratio, so that the ordinary summer's flow in the lower river is inadequate to supply the wants of irrigation, domestic, and other purposes, as has been supplied in previous years; and

Whereas a remedy has been proposed by the two Governments for this deficiency by impounding in an international dam and reservoir near the boundary line between the two Republics the annual flood waters of the spring season, which are greatly in excess of the wants

of irrigation, domestic, and other purposes in those seasons, such waters to be equitably distributed between the two Republics; and

Whereas it was afterwards discovered that other like projects of large dams and reservoirs were contemplated above said proposed international dam and reservoir; and

Whereas the two Governments jointly directed the International Boundary Commission hereinbefore mentioned to investigate and report upon the feasibility of the project; and

Whereas said commission reported that, in their judgment, the project was feasible, but that the flow was insufficient for more than one reservoir; and

Whereas the two Governments were unable to agree upon the construction of said proposed international dam and reservoir until some method of restraining the building and use of other dams and reservoirs which would destroy the usefulness of said proposed international dam and reservoir has been devised: Now therefore be it

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the acts of March 3, 1891, January 21, 1895, February 26, 1897, and May 11, 1898, shall be so construed as to authorize the appropriation and storage of the waters of the Rio Grande or its tributaries in the Territory of New Mexico, to which others have right by prior appropriation, and every person and every corporation which shall be guilty of thus unlawfully appropriating and storing said waters in this act mentioned shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. The unlawful appropriating and storing of water in this act mentioned may be prevented, and the dam, reservoir, or other means used for impounding the water may be removed by the injunction of any circuit court exercising jurisdiction in any district in which said water may be appropriated or stored, and proper proceedings in equity to this end may be instituted under the direction of the Attorney General of the United States.

SEC. 2. That the Secretary of State is hereby authorized to proceed with the consummation of the proposed treaty between the United States of America and the United States of Mexico, and if the United States of Mexico shall accept the construction of the proposed dam and reservoir, with the conditions that the flood water impounded by it shall be equally distributed between the two countries as liquidation of all past and future claims for water appropriated in the past or to be appropriated in the future by citizens of the United States otherwise than by impounding it in large dams and reservoirs in New Mexico, then the Secretary of State is further authorized to proceed with the construction of said dam and reservoir according to the plans and specifications submitted in the report of the International Boundary Commission, as published in Senate Document No. 229, Fifty-fifth Congress, second session, and the sum of $2,317,113.36 is hereby appropriated for that purpose.

EXHIBIT K

(Letter dated June 27, 1904, from the Secretary of State to the Secretary of the Interior)

WASHINGTON, D. C., *June 27, 1904*.

MY DEAR MR. SECRETARY: I have this day sent you a copy of a note from the Mexican ambassador in relation to the diversion of the waters of the Rio Grande. It has been informally suggested that a practical solution of this question might be accomplished under the national irrigation act.

I am informed that the engineers of the Hydrographic Bureau of the Geological Survey have already made some examination of the Rio Grande drainage basin with a view to devising some plan to provide a water supply for the irrigation of all the lands of the valley. I am also informed that the reservoir site known as Elephant Butte has been set aside as a reclamation project. It has been suggested that by establishing the main storage reservoir at Elephant Butte in New Mexico and a secondary reservoir near El Paso to catch the surplus flood waters and back up the overflow of the river, which is said to be heavy and perpetual, a sufficient supply of water can be obtained for irrigation in New Mexico, Texas, and Mexico. It has occurred to me that you might be able under the national irrigation act to provide an ultimate solution of the question presented by the Mexican ambassador. If so, I should be happy to cooperate in accomplishing that desirable object. I have accordingly transmitted to you a copy of the note of the Mexican ambassador, and have asked for any suggestion which you may be pleased to make in order to aid the department in making an answer to the ambassador's note.

Sincerely yours,

JOHN HAY.

HON. ETHAN ALLEN HITCHCOCK,
Secretary of the Interior.

EXHIBIT L

(Treaty between the United States of America and the United States of Mexico, dated May 21, 1906 (34 Stat. 2953), concerning irrigation from the Rio Grande)

The United States of America and the United States of Mexico being desirous to provide for the equitable distribution of the waters of the Rio Grande for irrigation purposes, and to remove all causes of controversy between them in respect thereto, and being moved by considerations of international comity, have resolved to conclude a convention for these purposes and have named as their plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

The President of the United States of Mexico, His Excellency Señor Don Joaquin D. Casasus, ambassador extraordinary and plenipotentiary of the United States of Mexico at Washington;

Who, after having exhibited their respective full powers, which were found to be in good and due form, have agreed upon the following articles:

"ARTICLE 1. After the completion of the proposed storage dam near Engle, N. Mex., and the distributing system auxiliary thereto, and as soon as water shall be available in said system for the purpose, the United States shall deliver to Mexico a total of 60,000 acre-feet of water annually in the bed of the Rio Grande at the point where the headworks of the Acequia Madre, known as the Old Mexican Canal, now exist above the city of Juarez, Mexico.

"ART. 2. The delivery of the said amount of water shall be assured by the United States and shall be distributed through the year in the same proportions as the water supply proposed to be furnished from the said irrigation system to lands in the United States in the vicinity of El Paso, Tex., according to the following schedule, as nearly as may be possible:

	Acre-feet per month	Corresponding cubic feet of water
January	0	0
February	1,090	47,480,400
March	5,460	237,837,600
April	12,000	522,720,000
May	12,000	522,720,000
June	12,000	522,720,000
July	8,180	356,320,800
August	4,370	190,357,200
September	3,270	142,441,200
October	1,090	47,480,400
November	540	23,522,400
December	0	0
Total for the year	60,000	2,613,600,000

"In cases, however, of extraordinary drought or serious accident to the irrigation system in the United States the amount delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under said irrigation system in the United States.

"ART. 3. The said delivery shall be made without cost to Mexico, and the United States agrees to pay the whole cost of storing the said quantity of water to be delivered to Mexico, of conveying the same to the international line, of measuring the said water, and of delivering it in the river bed above the head of the Mexican Canal. It is understood that the United States assumes no obligation beyond the delivering of the water in the bed of the river above the head of the Mexican Canal.

"ART. 4. The delivery of water as herein provided is not to be construed as a recognition by the United States of any claim on the part of Mexico to the said waters; and it is agreed that in consideration of such delivery of water Mexico waives any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the present Mexican Canal and Fort Quitman, Tex., and also declares fully settled and disposed of, and hereby waives, all claims heretofore asserted or existing, or that may hereafter arise or be asserted, against the United States on account of any damages alleged to have been sustained by the owners of land in Mexico by reason of the diversion by citizens of the United States of waters of the Rio Grande.

"ART. 5. The United States in entering into this treaty does not thereby concede, expressly or by implication, any legal basis for any claims heretofore asserted or which may be hereafter asserted by reason of any losses incurred by the owners of land in Mexico due or alleged to be due to the diversion of the waters of the Rio Grande within the United States; nor does the United States in any way concede the establishment of any general principle or precedent by the concluding of this treaty. The understanding of both parties is that the arrangement contemplated by this treaty extends only to the portion of the Rio Grande which

forms the international boundary, from the head of the Mexican Canal down to Fort Quitman, Tex., and in no other case.

"ART. 6. The present convention shall be ratified by both contracting parties in accordance with their constitutional procedure, and the ratifications shall be exchanged at Washington as soon as possible."

In witness whereof the respective plenipotentiaries have signed the convention both in the English and Spanish languages and have thereunto affixed their seals.

Done in duplicate at the city of Washington this 21st day of May, 1906.

ELIHU ROOT. [SEAL]
JOAQUIN D. CASASUS. [SEAL]

EXHIBIT M

(Notice of appropriation of 730,000 acre-feet of water per annum from the Rio Grande, filed by the United States in the office of the Territorial engineer of New Mexico on January 23, 1906)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Carlsbad, N. Mex., January 23, 1906.

Mr. DAVID L. WHITE,
Territorial Irrigation Engineer, Santa Fe, N. Mex.

DEAR SIR: The United States Reclamation Service, acting under authority of an act of Congress known as the reclamation act, approved June 17, 1902 (32 Stat. 388), proposes to construct within the Territory of New Mexico certain irrigation works in connection with the so-called Rio Grande project. The operation of the works in question contemplates the diversion of water from the Rio Grande River.

Section 22 of chapter 102 of the laws enacted in 1905 by the Thirty-sixth Legislative Assembly of the Territory of New Mexico, an act entitled "An act creating the office of Territorial irrigation engineer, to promote irrigation development and conserve the waters of New Mexico for the irrigation of lands, and for other purposes," approved March 16, 1905, reads as follows:

"Whenever the proper officers of the United States authorized by law to construct irrigation works shall notify the Territorial irrigation engineer that the United States intends to utilize certain specified waters, the waters so described and unappropriated at the date of such notice shall not be subject to further appropriations under the laws of New Mexico, and no adverse claims to the use of such waters, initiated subsequent to the date of such notice, shall be recognized under the laws of the Territory, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized."

In pursuance of the above statute of the Territory you are hereby notified that the United States intends to utilize the following-described waters, to wit:

A volume of water equivalent to 730,000 acre-feet per year, requiring a maximum diversion or storage of 2,000,000 miner's inches, said water to be diverted or stored from the Rio Grande River at a point described as follows:

Storage dam about 9 miles west of Engle, N. Mex., with capacity for 2,000,000 acre-feet, and diversion dams below in Palomas, Rincon, Mesilla, and El Paso Valleys, in New Mexico and Texas.

It is therefore requested that the waters above described be withheld from further appropriation and that the rights and interests of the United States in the premises be otherwise protected as contemplated by the statute above cited.

Very truly yours,

B. M. HALL,
Supervising Engineer.

EXHIBIT N

(Notice of appropriation of all the unappropriated water of the Rio Grande, filed by the United States in the office of the Territorial engineer of New Mexico on April 8, 1908)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Phoenix, Ariz., April —, 1908.

Mr. VERNON L. SULLIVAN,
Territorial Engineer, Santa Fe, N. Mex.

DEAR SIR: Claiming and reserving all rights under our former notice of January 23, 1906, addressed to David L. White, Territorial engineer of New Mexico, which said notice advised him of the intention of the United States to use the waters of the Rio Grande for the purpose of irrigation, and is now filed in your office, I do now hereby give you the following notice in addition to said former notice and supplemental thereto:

The United States, acting under authority of an act of Congress, known as the reclamation act, approved June 17, 1902 (32 Stat. 388), proposes to construct within the Territory of New Mexico certain irrigation works in connection with the so-called Rio Grande project. The operation of the works in question contemplates the diversion of the water of the Rio Grande River.

Section 40 of chapter 49 of the laws enacted in 1907 by the Thirty-seventh Legislative Assembly of the Territory of New Mexico, an act entitled "An act to conserve and regulate the use and distribution of the waters of New Mexico; to create the office of Territorial engineer; to create a board of water commissioners, and for other purposes," approved March 19, 1907, reads as follows:

"Whenever the proper officers of the United States authorized by law to construct works for utilization of waters within the Territory, shall notify the Territorial engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the Territory of New Mexico for a period of three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the Territorial engineer for his information, and no adverse claim to the use of the water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the Territory, except as to such amount of water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized: *Provided*, That in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the Territorial engineer shall become public water, subject to general appropriations."

In pursuance of the above statute of the Territory you are hereby notified that the United States intends to utilize the following-described waters, to wit:

All the unappropriated water of the Rio Grande and its tributaries, said water to be diverted or stored from the Rio Grande River at a point described as follows:

Storage dam about 9 miles west of Engle, N. Mex., with capacity for 2,000,000 acre-feet, and diversion dams below in Palomas, Rincon, Mesilla, and El Paso valleys in New Mexico and Texas.

It is therefore requested that the waters above described be withheld from further appropriation and that the rights and interests of the United States in the premises be otherwise protected as contemplated by the statute above cited.

Very truly yours,

LOUIS C. HILL,
Supervising Engineer.

EXHIBIT O

(Order dated May 25, 1906, of the Secretary of the Interior, modifying the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
Washington, May 25, 1906.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In a letter of January 25, 1906, to the department, Mr. F. C. Goudy, president of the Rio Grande Reservoir & Ditch Co., made complaint that the proposed construction of a reservoir by the company in Colorado for reclamation purposes and the procuring of a right of way therefor is being prevented by the Government.

In a report of February 26, 1906, on this letter the Director of the Geological Survey recommended that—

"If there be no objection on the part of the State Department, at whose instance the order of December 5, 1896, was made, the same be modified to permit the approval of rights of way for irrigation purposes on the tributaries of the Rio Grande which were initiated by actual field surveys based upon notices of appropriation of water filed under the laws of Colorado prior to March 1, 1903."

The Acting Secretary of State, in a letter of March 7, 1906, to the department, stated that—

"The Department of State approves the recommendation of the Director of the Geological Survey modifying the order of suspension in accordance with the request of the Rio Grande Reservoir & Ditch Co."

In a letter of the 22d instant to the department the Acting Secretary of State has extended the approval covered by the letter of March 7, supra—

"so as to include all companies or applicants whose rights of way for irrigation purposes on the tributaries of the Rio Grande * * * were initiated by actual field surveys based upon notices of appropriation of water filed under the laws of Colorado prior to March 1, 1903."

In view of the foregoing the departmental order of December 5, 1896, directing you to suspend action on all applications for right of way through the public lands for purposes of irrigation by using the waters of the Rio Grande or any of its tributaries in Colorado or New Mexico, and the order of January 13, 1897, modifying the original order so far as the tributaries of the Rio Grande are concerned by

limiting its application to tributaries emptying into the Rio Grande above the point where it becomes the boundary between the United States and Mexico, are hereby modified so as to exclude from their operation all applications for right of way covered by the approval in the letter of the 22d instant from the Acting Secretary of State, quoted above.

The letter of Mr. Goudy is transmitted herewith.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

EXHIBIT P

(Order, dated July 10, 1906, of the Acting Secretary of the Interior, modifying the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1906.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In departmental letter of May 25, 1906, to you, departmental orders of December 5, 1896, and January 13, 1897, were modified so as to exclude from their operation all applications for rights of way through the public lands for purposes of irrigation by using the waters of the Rio Grande or any of its tributaries in Colorado and New Mexico initiated by actual field surveys based on notices of appropriation of water filed under the laws of Colorado prior to March 1, 1903, such modification being favored by the Acting Secretary of State in a letter of May 22, 1906, to the department.

In view of this modification of the orders mentioned you are directed that in acting on this class of applications, now on file or that may be filed hereafter in your office, to submit them to the Director of the Geological Survey to ascertain whether they will conflict with the obligations of the United States, under the treaty with Mexico, recently ratified, or with the Rio Grande or any other project of the Reclamation Service, and to transmit the reports of the director, with the applications, when they are submitted, for departmental action.

Very respectfully,

THOS. RYAN,
Acting Secretary.

EXHIBIT Q

(Order, dated September 27, 1906, of the Acting Secretary of the Interior, modifying the embargo on the upper Rio Grande.)

DEPARTMENT OF THE INTERIOR,
Washington, September 27, 1906.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In a letter of the 24th instant to the department, the Acting Secretary of State has stated, with respect to applications for right of way through public lands for purposes of irrigation by using the waters of the Rio Grande or any of its tributaries in Colorado and New Mexico, that the Department of State perceives no reason for the further suspension of action on any application of such character.

He has stated further that the intent of the original departmental order of suspension dated December 5, 1896, was to conserve the interests of the Mexican Government in the waters of the Rio Grande pending an agreement between the United States and Mexico on the question, and that such an agreement has been reached and is embodied in the treaty signed May 21 last, by which the United States obligates itself to deliver to the Mexican Government 60,000 acre-feet of water annually.

He has accordingly recommended that the order of December 5, 1896, and all modifying orders be rescinded, thus removing so far as the Department of State is concerned, all restrictions on the consideration of applications involving any enterprise of a character which, on investigation by the Reclamation Service, is found to be not prejudicial to the treaty interests of Mexico.

In view of this recommendation the departmental order of December 5, 1896, and the several modifying orders are hereby revoked, and it is hereby directed that before any applications involving the use of the waters mentioned in Colorado and New Mexico are submitted for final departmental action by you they be first submitted to the Director of the Geological Survey to ascertain whether favorable action thereon would interfere with any project of the Reclamation Service or with the obligations of the United States under the treaty of May 21, 1906, with Mexico.

Very respectfully,

THOS. RYAN,
Acting Secretary.

EXHIBIT R

(Order dated April 25, 1907, of the Secretary of the Interior, modifying the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., April 22, 1907.

The honorable the SECRETARY OF THE INTERIOR.

SIR: The situation on the Rio Grande requires careful consideration and determination of policy by the Secretary. Briefly stated, the conditions are these:

The United States has entered into a treaty with Mexico, proclaimed by the President on January 16, 1907, by which it is agreed that the United States shall deliver to Mexico 60,000 acre-feet of water at the head of the Mexican canal near El Paso. In order to carry out this part of the treaty Congress has appropriated by act approved March 4, 1907, the sum of $1,000,000 toward the construction of a dam on the Rio Grande, this being assumed to furnish water for 25,000 acres, at $40 per acre. The total estimated cost of this project, including the dam, will be $7,200,000, of which amount $200,000 has been set aside and is now being used in the construction of subsidiary works, notably, a diversion dam above Las Cruces, N. Mex. The remaining amount—$6,000,000—must be obtained from the reclamation fund.

It is estimated that for this expenditure of $7,200,000 it will be possible to irrigate 180,000 acres at $40 per acre. Deducting the 25,000 acres in Mexico, this leaves 155,000 acres in New Mexico and Texas to refund the $6,200,000. By storing all the water of the Rio Grande, including storm floods, this acreage can be supplied. If the flow of the stream is notably diminished the area to be served will be correspondingly reduced and the cost per acre increased. This increase of cost will probably be at the expense of the lands in the United States, as Congress has already made the appropriation for the building charge to comply with the terms of the treaty.

The headwaters of this river are in the State of Colorado, surrounding the San Luis Valley. For several years after December 5, 1896, the Department of the Interior refused to grant rights of way for reservoirs or canals on these headwaters because of the effect on the international problem below. The departmental order was first modified May 25, 1906, to permit approval in cases where the applicants made a showing of priority over the United States. After the Senate had advised the ratification of the treaty on July 10, 1906, these orders of the department were revoked and the Reclamation Service was required to pass upon each case as to conflict with the treaty or the Rio Grande project. Most of the older cases have been reported on favorably by the Reclamation Service. In some of the cases, especially the later ones, the conditions involved some doubt as to the advisability of approval and the questions of policy to be considered by the department were reported to the General Land Office for submission to the department when the cases were presented for your consideration.

Recently a few exceptions have been made as to small reservoirs located high in the mountains where it appeared that the construction of works would not interfere notably with the supply of water which could be had in the lower reservoir. In view of the fact, however, that the treaty above mentioned has been concluded and an appropriation has been made by Congress for constructing the works in part, it appears probable that any considerable extension of the reservoir system at the headwaters may interfere with the plans of the Government.

Wide publicity has been given to the fact that the department has in a few cases permitted the location of small reservoirs on the headwaters of the Rio Grande. As a result a considerable number of applications are being made for other reservoir sites. If it were practicable to lay down a general rule by which the smaller of these sites could be approved, the results would probably be beneficial, but a practical difficulty arises in the possibility of defining the limits between the large and small projects. It is unquestionably true that if all of the large projects on the headwaters of the river which are planned by private parties could be actually constructed the water supply for the Government reservoir would be to a large extent cut off. It is important, therefore, to have a general rule which can be applied to all cases.

RECOMMENDATIONS

I therefore recommend that the department lay down the general policy that until the development of irrigation on the upper Rio Grande in the State of Colorado and the Territory of New Mexico shall furnish sufficient data to determine the effect of the storage and diversion of water in that vicinity upon the water supply for the Engle Reservoir of the Rio Grande project no further rights of way be approved which involve the storage or diversion of the waters of the upper Rio Grande and its tributaries, except applications of two kinds; first, those in connection with which there is a showing that the rights of the parties were initiated prior to the beginning of active operations by the Reclamation Service for the Rio Grande project, namely, March 1, 1903; second, applications which involve the diversion or storage of not exceeding 1,000 acre-feet of water per annum.

When it becomes possible to determine the effect of the approved applications upon the water available for storage for the Rio Grande project, it may be possible to allow the use of rights of way to a greater extent than is now proposed.

Very respectfully, F. H. NEWELL.

APRIL 25, 1907.

Approved:

J. R. GARFIELD, *Secretary.*

EXHIBIT S

(Order, dated March 2, 1923, by the Secretary of the Interior, modifying the embargo on the upper Rio Grande)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., March 2, 1923.

The SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: In the hearings on the problems of the Colorado River held in San Diego December 12, 1921, the Reclamation Service was criticized by the delegate from Colorado for the attitude of the United States concerning the reservation of public lands in Colorado for the protection of the water supply of the Rio Grande. In reply to his remarks you made the following rejoinder:

"It may be that the Reclamation Service has been dilatory in not having ascertained and reported heretofore that there was sufficient water falling within that basin to fill the Elephant Butte Reservoir and to enable us to perform our international obligations and our obligations to the prior users below that reservoir and yet to release certain of the waters in the State of Colorado—it may be that they have been dilatory, as I say, in the performance of that duty. I have suggested as much myself, and it shall be my pleasure to see that at an early date a report is made upon this proposition."

In response to your wishes thus expressed I have the honor to make the following report concerning this question:

The policy of the department in regard to the approval of rights of way for the use of public lands in the Rio Grande drainage was initiated upon a request of the Department of State through the Department of Justice on December 5, 1896, in pursuance of which the Secretary of the Interior directed suspension of applications for rights of way upon public lands for irrigation purposes by the use of waters of the tributaries of the Rio Grande entering it above where it becomes the international boundary. Soon after the organization of the Reclamation Service a study of the situation was made which resulted in recommendation for the construction of Elephant Butte Reservoir. The treaty with Mexico regarding the furnishing of 60,000 acre-feet for the Mexican lands was proclaimed January 16, 1907.

A letter from Director Newell to the Secretary of the Interior, dated April 22, 1907, was closed with the following recommendations:

"RECOMMENDATIONS

"I therefore recommend that the department lay down the general policy that until the development of irrigation on the upper Rio Grande in the State of Colorado and the Territory of New Mexico shall furnish sufficient data to determine the effect of the storage and diversion of water in that vicinity upon the water supply for the Engle Reservoir of the Rio Grande project, no further rights of way be approved which involve the storage or diversion of the waters of the upper Rio Grande and its tributaries, except applications of two kinds; first, those in connection with which there is a showing that the rights of the parties were initiated prior to the beginning of active operations by the Reclamation Service for the Rio Grande project, namely, March 1, 1903; second, applications which involve the diversion or storage of not exceeding 1,000 acre-feet of water per annum.

"When it becomes possible to determine the effect of the approved applications upon the water available for storage for the Rio Grande project, it may be possible to allow the use of rights of way to a greater extent than is now proposed."

These recommendations were approved by the Secretary of the Interior on April 25, 1907.

The recommendation and the accompanying letter indicate that the purpose of the reservation of the lands in Colorado was to protect the water supply of the Rio Grande project as a whole, including prior rights in the United States and Mexico and extension of irrigation as contemplated by the construction of the Elephant Butte Reservoir.

The filings of the Reclamation Service upon the waters of the Rio Grande for storage and use in New Mexico, Texas, and Mexico were designed to cover all the waters of the river at that time unappropriated and to include, of course, such waters as had been appropriated by the lands included within the project. Information at that time indicated, and subsequent experience has confirmed, the fact that the Elephant Butte Reservoir of the large capacity constructed is sufficient to control and store the flood waters of the Rio Grande in all years except a few extraordinary floods of rare occurrence, which may be partially wasted; also that the amount of water that can thus be conserved and beneficially used is insufficient to supply all of the lands that might be reached with those waters. Or, in other words, that needs of the available lands exceed the water supply made available by the reservoir.

An important fact in this connection is that the dependable low water and ordinary flow of the river have long been appropriated and used for irrigation in Colorado and New Mexico above the Elephant Butte Reservoir, and nothing important remained for appropriation for the Elephant Butte project excepting freshets and floods, which could not be intercepted and used commercially above this point without storage. Obviously such waters can not be made available except by large storage works.

The appropriation of these waters for the use of the Rio Grande project has been diligently followed by the expenditure of public funds in the construction of reservoir, diversion works, canal, and distribution systems, and the consequent drainage systems, with a total investment of over $10,600,000 therein by the United States. Probably an equal amount has been invested by the settlers in clearing, leveling, and otherwise improving suitable for appropriate use the lands to utilize this water supply. So far as the formalities and the diligence of construction are concerned, the rights of the United States and of the settlers on the project have not been and can not be questioned.

The diversion and use of the dependable natural flow of the river and its tributaries has been so complete in Colorado and northern New Mexico that it may be stated broadly that any further feasible extension of such diversions can not materially cripple the water supply of the Rio Grande project unless accompanied by storage of the flood waters at or above such diversion.

The treaty with Mexico guarantees the delivery of 60,000 acre-feet of water annually at the diversion dam near El Paso for use in Mexico. The records indicate a dependable supply from the Elephant Butte Reservoir of 720,000 acre-feet annually, or twelve times the amount required to fulfill the treaty. A general knowledge of the basin indicates that there is no practical possibility of so depleting the supply that the Elephant Butte Reservoir could not receive and conserve sufficient of the flow of the river to fulfill the obligations of the treaty, if the entire shortage were imposed upon the American lands in the Rio Grande project. Any material decrease in the amount available for storage would react upon the project and cause a loss to the water users due to the deficiency in the water supply.

In view of the above the question resolves itself about as follows:

Is it legal, and if legal, advisable, for the Secretary of the Interior to decline to approve the use of the public lands for storing and diverting for irrigation the waters of the Rio Grande, for the purpose of protecting the water supply of the lands developed under the Elephant Butte Reservoir in New Mexico and Texas?

It may be physically possible in some cases to store and use the waters of the upper Rio Grande without the use of public lands, but the opportunities for such development on exclusively private lands are believed to be few and meager and not seriously to affect the main question. It is possible to build storage reservoirs on the upper Rio Grande and its tributaries that would intercept sufficient flow to deplete materially the supply of the Elephant Butte Reservoir, and that the waters thus stored could be used for irrigation below such storage and above Elephant Butte.

There are, of course, legal means, by injunction and otherwise, by which the valid rights of the irrigators under the Elephant Butte Reservoir may be protected, but these are slow of operation, and to depend upon them may be an injustice to possible investors in storage works who might undertake storage works in good faith if such were approved by the Secretary of the Interior, and later find their investment wasted for lack of valid rights to the necessary water.

The above questions of law and of policy are of so fundamental a character that they demand consideration and decision directly by the Secretary of the Interior. It may, however, be in order for this office to venture a few suggestions.

It is believed that the best use of the waters for irrigation is the proper object of the policies and proceedings of this service, and such use must be determined at any given time with full consideration of existing legal and physical conditions. Practically complete appropriation of the dependable flow of the river was accomplished many years before the construction of the Elephant Butte Reservoir, and no material increase of the use of the river could be feasibly accomplished except by the provision of large storage works. Manifestly, to be complete and make the best use of the water supply, these works must be constructed at a point low enough to intercept practically all the drainage of the river which could not be otherwise conserved. The Elephant Butte site was selected as one which combined this advantage of location with the physical condition that at no other place in the basin could a reservoir of sufficient capacity be constructed to intercept the flow of all the unappropriated waters above the Mesilla Valley. Had the reservoir been built at such higher point as White Rock Canyon or above, many large and important tributaries, such as the Galisteo, Puerco, and numerous other streams would have continued to waste large quantities of water which are intercepted and conserved at the Elephant Butte site.

In order to make such a large reservoir commercially feasible it is necessary that it receive the benefits of practically all of the unappropriated waters, and these were accordingly appropriated for such use.

Even though the wisdom of the construction of the Elephant Butte reservoir might be questioned by some, the situation now is that the investment has been made and is a physical success. The lands are served and are developed. To take away its water supply would not only violate existing moral and legal rights but would destroy large investments in proportion to the magnitude of the deprivation.

On the other hand, it is manifestly wise and just to encourage any developments that may be carried out in the basin above that will not materially deplete the supply of the reservoir or otherwise jeopardize the interests it has built up. Extensive studies have been made by the Reclamation Service, as well as by the Geological Survey, the State of New Mexico, and other public and private agencies, and these have developed the fact that large areas now or formerly irrigated in Colorado and New Mexico have produced underground conditions where large bodies of land have been deprived of their fertility by the rise of ground water, and hundreds of thousands of acres are for this reason now unavailable for cultivation from this cause, although most of the area is still available for grazing, and some of it produces a low grade of coarse hay.

More than half a million acres of land in the San Luis Valley, Colo., and various small valleys in New Mexico require expensive drainage systems to bring back their fertility.

These water-logged lands now discharge immense quantities of water into the air through evaporation, a part of which would be conserved by proper drainage systems and returned to the streams, because, with the lower ground water, the natural evaporation from those lands would be decreased. If such drainage works were carried out in Colorado and the water returned to the stream and not used locally, it would follow down the stream, and unless diverted would increase the supply to the Elephant Butte reservoir. It would, however, pass by many small ditches which divert water from the river, and during the irrigation season most of it could be diverted by these ditches, and in dry times all of it. It would be extremely difficult to distinguish this from other waters of the river and to prevent its diversion by such ditches.

The valley lands in New Mexico which have been cultivated in the past are largely in need of drainage works also, and the proper drainage of these lands would also conserve much water now lost and convey it into the river, where, if not intercepted, it would flow into the Elephant Butte Reservoir. The drainage of practically all of the land in Colorado and New Mexico would be available as inflow to the Elephant Butte Reservoir at all times outside of the irrigation season, unless storage works so located as to intercept such waters were provided.

No Government authority has any right or power to interfere with the vested rights of the irrigators under the Elephant Butte Reservoir or elsewhere. These rights, whatever they are, can be, and if necessary will be, defended in the courts by the people most interested; that is, the farmers themselves. But it is believed that the Secretary of the Interior, as the head of the Reclamation Service, is in a position to assist in the full development and conservation of the water resources of this basin without local interest, bias, or prejudice and that much can be done in the way of encouraging such development and removing jeopardy from investments made for this purpose.

It is believed that under present conditions the department would be justified, with the approval of the interests below, in assuring prospective investors in Colorado and northern New Mexico that they would be protected in the storage of waters in the same quantity that the construction of drainage works might deliver water into the river at a point low enough to insure its flow into the Elephant Butte Reservoir. Each individual project should be worked out after careful study of the local, physical, and other conditions surrounding it. But the announcement of this general principle, it is believed, would remove some of the timidity of proposed investors, either public or private.

The effect of an approval by the Secretary of an application for irrigation right of way under the act of March 3, 1891 (26 Stat. 1095), upon the interests of the United States under the reclamation law has not been decided by the courts. The view has been expressed that as the regulations require applications to be accompanied by evidence of ample water right the Secretary's approval may commit the Government to a recognition of the validity of the water right claimed in connection with the application, with a possible estoppel of the United States to assert any water right in conflict therewith. Accordingly any approval of right of way as herein suggested should be carefully guarded by a reservation of all rights claimed by the United States for the Rio Grande project and for the Mexican lands under the treaty.

RECOMMENDATION

It is recommended that this office be authorized to negotiate for the release of specific areas of public land for purposes of water storage under conditions that will best conserve and utilize the water resources and will protect vested rights in all parts of the Rio Grande Basin—such negotiations to be subject to the approval of the Secretary of the Interior, and, prior to such approval, to be subject to the scrutiny of all interested parties.

Respectfully,

A. P. DAVIS, *Director.*

Approved:

ALBERT B. FALL, *Secretary.*

EXHIBIT T

(New Mexico act of March 12, 1923, authorizing representation on Rio Grande Commission)

An act providing for the appointment of a commissioner on behalf of the State of New Mexico to negotiate a compact or agreement respecting the use, control, and disposition of the waters of the Rio Grande River and for other purposes (S. B. No. 104 (as amended); approved March 12, 1923)

Be it enacted by the Legislature of the State of New Mexico—

SECTION 1. The Governor of the State of New Mexico shall, with the advice and consent of the Senate, appoint a commissioner who shall represent the State of New Mexico upon a joint commission, to be constituted as hereinafter provided for the purpose of negotiating and concluding a compact or agreement fixing and determining the rights of the signatories to the use, control, and disposition of the waters of the Rio Grande River, and of the streams tributary thereto, excepting as to all waters appropriated to the use appurtenant and necessary to the full and complete operation of the Rio Grande project in southern New Mexico, being an irrigation project constructed by the United States Reclamation Service: *Provided,* That settlers and landowners under said project shall not be put to any additional expense by reason of the passage of this act.

Said joint commission shall include either:

(a) Commissioners for the States of Colorado and New Mexico, and a duly authorized representative of the United States of America; or

(b) Commissioners for the States of Colorado and New Mexico: *Provided, however,* That any such compact or agreement shall not become operative and shall not bind any of the signatories thereto, unless and until the same shall have been ratified and approved by the legislature of each of the signatory States and by the Congress of the United States.

SEC. 2. The Governor of the State of New Mexico shall notify the Governor of the State of Colorado of the appointment of the commissioner for New Mexico pursuant to the provisions hereof. The commissioner for New Mexico shall commence the performance of his duties upon receipt of notice by the Governor of New Mexico from the Governor of Colorado of the appointment of a commissioner for said State, and unless the Governor of Colorado shall have officially communicated notice of such appointment to the Governor of New Mexico on or before October 1, 1924, the appointment of the commissioner for New Mexico hereunder shall cease and determine without further act.

SEC. 3. When the commissioner for New Mexico shall enter upon the performance of his duties he shall be furnished such engineering, legal, stenographic, and other assistants as may be necessary or essential to the proper performance of his duties, and it shall be the duty of the State engineer and his deputies to aid and assist the commissioner for New Mexico whenever requested by him so to do.

SEC. 4. The compensation of the commissioner for New Mexico, and of his assistants, shall be fixed by the governor and attorney general, and the State of New Mexico shall pay all necessary traveling and other expenses incurred in the performance of the duties of the commissioner and his assistants both within and without the State of New Mexico, and also all other necessary costs, charges, and expenses hereunder, including the payment of an equitable portion of the costs and expenses of any such joint commission. Such compensation and expenses shall be paid monthly, upon vouchers approved by the governor and attorney general, by warrants drawn by the State auditor.

For the purpose of carrying out the provisions of this act there is hereby appropriated out of the water reservoir for irrigation purposes income fund the sum of $5,000, or so much thereof as may be necessary.

SEC. 5. The commissioner for New Mexico shall have full authority to make any and all investigations of the Rio Grande River and the drainage area thereof, of the conditions obtaining upon said stream, and of the present and future needs relative to the use, control, and benefit of the waters of said stream, and to make such other investigations as may be necessary to the proper performance of his duties hereunder, and said commissioner shall have the authority to administer oaths and to examine and require the attendance of witnesses.

EXHIBIT U

(Colorado act of March 20, 1923, authorizing representation on the Rio Grande Commission)

An act providing for the appointment of a commissioner on behalf of the State of Colorado to negotiate a compact or agreement respecting the use, control, and disposition of the waters of the Rio Grande River, and for other purposes

Be it enacted by the General Assembly of the State of Colorado—

SECTION 1. The Governor of the State of Colorado shall appoint a commissioner who shall represent the State of Colorado upon a joint commission, to be constituted as hereinafter provided, for the purpose of negotiating and concluding a compact or agreement fixing and deter-

mining the rights of the signatories to the use, control, and disposition of the waters of the Rio Grande River, and of the streams tributary thereto. Said joint commission shall include either:

(a) Commissioners for the States of Colorado, New Mexico, and Texas, and a duly authorized representative of the United States of America; or

(b) Commissioners for the States of Colorado and New Mexico and a duly authorized representative of the United States of America; or

(c) Commissioners for the States of Colorado and New Mexico: *Provided, however,* That any such compact or agreement shall not become operative and shall not bind any of the signatories thereto unless and until the same shall have been ratified and approved by the legislature of each of the signatory States and by the Congress of the United States.

SEC. 2. The Governor of Colorado shall notify the Governors of the States of New Mexico and Texas of the appointment of the commissioner for Colorado pursuant to the provisions hereof. The commissioner for Colorado shall commence the performance of his duties upon receipt of notice by the Governor of Colorado from the Governor of either of the States of New Mexico or Texas of the appointment of a commissioner for said State, and unless at least one of said States shall have named its commissioner and shall have officially communicated notice of such appointment to the Governor of Colorado on or before October 1, 1924, the appointment of the commissioner for Colorado hereunder shall cease and determine without further act.

SEC. 3. When the commissioner for Colorado shall enter upon the performance of his duties he shall be furnished such engineering, legal, stenographic, and other assistants as may be necessary or essential to the proper performance of his duties, and it shall be the duty of the State engineer and his deputies, the division engineer of irrigation division No. 3, and the water commissioners whose districts are included within said irrigation division to aid and assist the commissioner for Colorado whenever requested by him so to do.

SEC. 4. The compensation of the commissioner for Colorado and of his assistants shall be fixed by the governor, and the State of Colorado shall pay all necessary traveling and other expenses incurred in the performance of the duties of the commissioner and his assistants, both within and without the State of Colorado, and also all other necessary costs, charges, and expenses hereunder, including the payment of an equitable portion of the costs and expenses of any such joint commission. Such compensation and expenses shall be paid monthly, upon vouchers approved by the governor, by warrants drawn for the payment thereof upon the State treasurer by the State auditor in the ordinary manner, out of any funds appropriated under the provisions of an act entitled "An act to enable the State of Colorado to protect the waters of its natural streams and to maintain the right of appropriation and use of such waters for beneficial purposes within this State, and making an appropriation therefor of the first class" or out of any appropriation of the first class made for the protection of the waters of the State.

SEC. 5. The commissioner for Colorado shall have full authority to make any and all investigations of the Rio Grande River and the drainage area thereof, of the condition obtaining upon said stream and of the present and future needs relative to the use and benefit of the waters of said stream, and to make such other investigations as may be necessary to the proper performance of his duties hereunder, and said commissioner shall have authority to administer oaths and to examine and require the attendance of witnesses.

SEC. 6. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

SEC. 7. In the opinion of the general assembly an emergency exists; therefore this act shall take effect and be in force from and after its passage.

Approved, March 20, 1923.

A PROJECT TO ESTABLISH A PARK IN THE SOUTHERN APPALACHIAN MOUNTAINS

Mr. TEMPLE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing a report that was made last night to the Secretary of the Interior on the subject of a national park in the Southern Appalachian Mountains.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD for the purpose indicated. Is there objection?

There was no objection.

Mr. TEMPLE. Mr. Speaker, it gives me pleasure to bring to the attention of the Members of the House, in accordance with a suggestion made to me by Doctor Work, Secretary of the Interior, the report made to him last evening by the Southern Appalachian National Park committee, together with a few introductory sentences prepared in the Interior Department concerning the committee and the work for which it was created.

The Southern Appalachian National Park Committee was appointed by Secretary Work, of the Interior Department, last February for the purpose of choosing the most typically scenic area in the East as a national park. The membership was composed of outstanding experts on parks and students of outdoor life. It included: W. A. Welch, chief engineer and general manager of the Palisades Interstate Park of New York and New Jersey; Harlan P. Kelsey, former president of the Appalachian Mountain Club of Boston, and a well-known landscape architect; William C. Gregg, a prime mover of the National Arts Club of New York and a student of recreational development through parks and a director of the National Park Association; Glenn S. Smith, acting chief topographic engineer of the Geological Survey and representing the Secretary of the Interior on the committee, and as chairman, Hon. H. W. TEMPLE, Member of the House of Representatives from Pennsylvania. All of the members served without remuneration. The report of the Southern Appalachian National Park Committee in full follows:

"The members of the committee appointed by you and designated as the Southern Appalachian National Park Committee, in accordance with your instructions, have spent the past eight months investigating the southern Appalachian Mountain region with a view of determining whether areas exist of sufficient size, containing scenery of such grandeur, and at the same time typical of the region, which are suitable to be considered as a site for a national park.

"Nature calls us all, and the response of the American people has been expressed in the creation, so far, of 19 national parks. All but one are west of the Mississippi River. The two-thirds of our population living east of the Mississippi has contented itself with a few State parks, not knowing that in the southern Appalachian Ranges there are several areas which fill the definition of a national park, because of beauty and grandeur of scenery, presence of a wonderful variety of trees and plant life, and possibilities of harboring and developing the animal life common in the precolonial days but now nearly extinct.

"It has not been generally known that eastern parks of national size might still be acquired by our Government. The committee has been impressed with the amount of interest manifested in all sections of the East in the proposed establishment of a national park in the southern Appalachian region, and this interest has resulted in numerous requests that the committee inspect various areas. Many of these requests pertained to localities that have abundant scenic features, but which are not of sufficient size to warrant their being considered for a national park. Every effort has been made to consider carefully the merits of the various proposed sites, and wherever there was evidence that an area seemed to justify the committee in making a personal inspection, visits have been made either by the committee as a whole or by a delegation from it. Many of the areas in these mountains having unquestionable national-park features are now in the national forests under Government control and so available for recreational use; the committee is not disposed to suggest a change in their present status.

"We inspected the northern part of Georgia whose fine mountains blend with the highland region of southern North Carolina. We ascended Mount Mitchell and viewed the splendid Black Mountain Range north of Asheville. We went over carefully the Grandfather Mountain region, which for our study included the beautiful country from Blowing Rock to remarkable Linville Gorge. We responded to the call of the poet—to see Roan Mountain if we would really see the southern Appalachians. We went to Knoxville and from there to the tops of "The Big Smokies," which carry on their crest the boundary line between North Carolina and Tennessee. We went into Virginia to inspect that portion of the Blue Ridge on the east side of the Shenandoah Valley, which extends from Front Royal to Waynesboro. Some members of the committee also visited Cumberland Gap, southern West Virginia, northern Alabama, and eastern Kentucky. Several areas were found that contained topographic features of great scenic value, where waterfalls, cascades, cliffs, and mountain peaks with beautiful valleys lying in their midst gave ample assurance that any or all of these areas were possible for development into a national park which would compare favorably with any of the existing national parks in the West. All that has saved these near-by regions from spoliation for so long a time has been their inaccessibility and the difficulty of profitably exploiting the timber wealth that mantles the steep mountain slopes. With rapidly increasing shortage and mounting values of forest products, however, we face the immediate danger that the last remnants of our primeval forests will be destroyed, however remote on steep mountain side or hidden away in deep, lonely cove they may be.

"The conditions in the East where all land is held in private ownership, as compared with those existing in the West when national parks were created from Government-owned lands, has

made our problem a difficult one. The density of population, together with the commercial development in progress or in prospect, often practically prohibited the selection of areas of great natural beauty which if located remote from such development would have been seriously considered.

"It is the opinion of the committee that a park in the East should be located, if possible, where it will benefit the greatest number, and it should be of sufficient size to meet the needs as a recreational ground for the people not only of to-day but of the coming generations. The committee therefore decided that no site covering less than 500 square miles would be considered. This eliminated a large number of proposed areas and allowed the committee to concentrate its efforts on a few that appeared to be possible sites on account of their size, location, and favorable scenic features. These sites have therefore been thoroughly examined.

"The committee laid down a few simple requirements for its guidance in seeking an area which could be favorably reported to you for the possible consideration of Congress:

"1. Mountain scenery with inspiring perspectives and delightful details.

"2. Areas sufficiently extensive and adaptable so that annually millions of visitors might enjoy the benefits of outdoor life and communion with nature without the confusion of overcrowding.

"3. A substantial part to contain forests, shrubs, and flowers, and mountain streams, with picturesque cascades and waterfalls overhung with foliage, all untouched by the hand of man.

"4. Abundant springs and streams available for camps and fishing.

"5. Opportunities for protecting and developing the wild life of the area, and the whole to be a natural museum, preserving outstanding features of the southern Appalachians as they appeared in the early pioneer days.

"6. Accessibility by rail and road.

"We have found many areas which could well be chosen, but the committee was charged with the responsibility of selecting the best, all things considered. Of these several possible sites the Great Smokey Mountains easily stand first, because of the height of mountains, depth of valleys, ruggedness of the area, and the unexampled variety of trees, shrubs, and plants. The region included Mount Guyot, Mount Le Conte, Clingmans Dome, and Gregory Bald, and may be extended in several directions to include other splendid mountain regions adjacent thereto.

"The Great Smokies have some handicaps which will make the development of them into a national park a matter of delay; their very ruggedness and height make road and other park development a serious undertaking as to time and expense. The excessive rainfall also—not yet accurately determined—is an element for future study and investigation in relation both to the development work, subsequent administration, and recreational use as a national park.

"The Blue Ridge of Virginia, one of the sections which had your committee's careful study, while secondary to the Great Smokies in altitude and some other features, constitute, in our judgment, the outstanding and logical place for the creation of the first national park in the southern Appalachians. We hope it will be made into a national park and that its success will encourage the Congress to create a second park in the Great Smokey Mountains which lie some 300 miles distant southwest.

"It will surprise the American people to learn that a national park site with fine scenic and recreational qualities can be found within a three-hour ride of our National Capital and within a day's ride of 40,000,000 of our inhabitants. It has many canyons and gorges with beautiful cascading streams. It has some splendid primeval forests, and the opportunity is there to develop an animal refuge of national importance. Along with the whole southern Appalachians, this area is full of historic interest; the mountains looking down on valleys with their many battle fields of Revolutionary and Civil War periods and the birthplaces of many of the Presidents of the United States. Within easy access are the famous caverns of the Shenandoah Valley.

"The greatest single feature, however, is a possible skyline drive along the mountain top, following a continuous ridge and looking down westerly on the Shenandoah Valley from 2,500 to 3,500 feet below, and also commanding a view of the Piedmont Plain stretching easterly to the Washington Monument, which landmark of our National Capital may be seen on a clear day. Few scenic drives in the world could surpass it.

"We therefore recommend the creation of a national park in the part of the Blue Ridge Mountains of Virginia above described and shown approximately on the accompanying map.

"We have not attempted to estimate the cost of acquiring this area, as we are not sure that it falls within the scope of our committee's work. We suggest, however, that a spirit of constructive cooperation on the part of the State of Virginia and among some of the large landowners of this region with whom we have been in touch promises reasonable prices and perhaps a number of donations.

"We suggest that if Congress thinks favorable of this proposed park site, a commission be appointed to handle the purchase and to solicit contributions and to arrange condemnation proceedings if the State of Virginia deems it wise. The creation of such a park may well be made contingent on a limited total land cost."

ROBERT J. OWENS, A PROHIBITION AGENT

Mr. LAGUARDIA. Mr. Speaker, I press my motion for consideration of House Resolution 365, reported by the Committee on the Judiciary December 11.

The SPEAKER. The gentleman from New York demands the right to call up as a matter of privilege a resolution, which the Clerk will report by title.

The Clerk read as follows:

House Resolution 365, requesting the Secretary of the Treasury to furnish to the House of Representatives certain information regarding Robert J. Owens, a prohibition agent.

Mr. BLANTON. Mr. Speaker, I reserve a point of order.

Mr. BEGG. I make the point of order, unless the gentleman desires to be heard.

Mr. DYER. Mr. Speaker, I make the point of order that the gentleman's motion is not in order. The Committee on the Judiciary has given consideration to this resolution. The gentleman from New York [Mr. LAGUARDIA] appeared before the committee, and the committee unanimously reported adversely on the resolution, and under the rules of the House the gentleman is not privileged to call it up, not being a member of the Committee on the Judiciary.

Mr. LAGUARDIA. Mr. Speaker, may I be heard on the point or order?

The SPEAKER. The Chair will hear the gentleman from New York.

Mr. SANDERS of Indiana. Mr. Speaker, my understanding is if there are any additional points of order, they ought to be made at the same time. There are additional points of order from those suggested.

Mr. DYER. There are, but I make that one on behalf of the Committee on the Judiciary.

Mr. LONGWORTH. Mr. Speaker, I desire to make an additional point of order. I can make it now or later.

The SPEAKER. The gentleman can state his point of order now.

Mr. LONGWORTH. I make the point of order, Mr. Speaker, that even if it was in order for a Member other than a member of the Judiciary Committee to call up this resolution as a privileged matter, the resolution is not in fact privileged, because on line 4 it asks for the reason and cause, which involves a matter of opinion. I make that further point of order.

Mr. SANDERS of Indiana. And the additional point of order that on yesterday, by unanimous consent, the House fixed the procedure for to-day and there was no exception made. This is not a matter of personal privilege, certainly, but just a question of legislative procedure, and having fixed the procedure for to-day this is not privileged in advance of the other matter.

The SPEAKER. The Chair would first like to hear the gentleman on the point of order raised by the gentleman from Missouri.

Mr. LAGUARDIA. The resolution of inquiry was introduced December 1, and on December 11 was reported by the Committee on the Judiciary with an adverse report. The rules, Mr. Speaker, clearly give a privileged status to resolutions of this kind. The rule has been in existence since 1879, and it has been repeatedly held that a resolution of inquiry calling upon the head of a department for facts is a privileged resolution and so provided and repeatedly held under the rules of the House.

Mr. SANDERS of Indiana. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. SANDERS of Indiana. I would like to ask the gentleman to cite the rule which makes that provision.

Mr. LAGUARDIA. The gentleman is familiar with the rules, and he will find in sections 834 and 835 of the Manual the authority I have cited. It has been repeatedly held that the committee has eight days within which to make a report, and that during that period of eight days it is not privileged to move to discharge the committee. But any time after the eight-day period the Member introducing the resolution may move the discharge of the committee, and since 1870 that has been held to be privileged.

On July 15, 1892, where a premature motion for the discharge of a committee was made the Speaker held that it was not privileged during the eight-day period, but once it is reported its consideration is privileged, and in the failure of the committee to report within the eight-day period a motion to discharge the committee is privileged. If a motion to discharge a committee after the eight-day period is privileged, surely a report of the committee for consideration is likewise privileged, and the fact that it is an adverse report should not take from the resolution its privileged character.

On the other hand, in reply to the point of order made by the gentleman from Missouri, if only a member of the committee may move for consideration, and as we have in this case an adverse report, that in and of itself would destroy the purpose of the rule, because if only a member of the committee can move for consideration and you have an adverse report of the committee, it stands to reason that the resolution would never be called up.

Mr. LONGWORTH. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. LONGWORTH. The gentleman would not deny that it would be within the province of the Committee on Rules to make it in order.

Mr. LAGUARDIA. No.

Mr. LONGWORTH. The gentleman stated that it would be impossible to consider it, but it stands in the same position as any other bill or resolution.

Mr. LAGUARDIA. I think the gentleman would find great difficulty in finding any instance where the Committee on Rules has ever brought in a rule for the consideration of a resolution under these circumstances.

Mr. LONGWORTH. If the gentleman would appear before the Rules Committee and present a good case, as I am sure he always does, he would get the rule.

Mr. LAGUARDIA. I am inclined to think that the gentleman from Ohio is not serious in making that suggestion. I think, Mr. Speaker, under the rules and precedents my motion at this time is clearly in order.

Mr. CRAMTON. Mr. Speaker——

The SPEAKER. Is the gentleman in favor of or against the point of order?

Mr. CRAMTON. I am in favor of the points of order only in part.

The SPEAKER. The Chair is ready to rule.

Mr. CRAMTON. Unless the Chair is going to overrule all the points of order, I want to be heard.

The SPEAKER. The Chair will hear the gentleman.

Mr. CRAMTON. Mr. Speaker, I am not interested in the subject matter of the resolution. I am willing to assume that the action of the Judiciary Committee is entirely correct. I am, however, somewhat jealous of the protection of the rights of Members and the protection of the rights of minorities with reference to resolutions of inquiry. If it should be held that the point of order made by the gentleman from Missouri is correct, as I understand his point of order, it means to do away with the right which a minority heretofore has had with reference to resolutions of inquiry. I do not believe that is desirable.

The point of order of the gentleman from Missouri, as I understand, is that a report having been made upon the resolution, that report having been adverse, that no one now can call up that resolution and the report on it except a member of the committee. I am not sure whether he makes the point that any report being made, the resolution is not entitled to privileged consideration. I am not sure how far his point went. I do not see where they get the authority for the statement that no one but a member of the committee can call up the resolution in view of an adverse report. The procedure adopted in the last session with reference to the discharge of a committee from consideration of measures only applies to bills and joint resolutions and does not apply to resolutions of inquiry, which is simply a House resolution. The only provision of the rules that has to do with this subject is as follows:

> All resolutions of inquiry addressed to the heads of executive departments shall be reported to the House within one week after presentation.

Under that rule has grown up the practice of the House giving to the resolution of inquiry a privileged status. All that the rule definitely requires is that the committee shall report, but the report of the committee is an idle ceremony unless it does lead to possible consideration by the House. If it is to be held that the resolution itself when reported has no privilege, then it is easy to see how a majority in this House can entirely put the lid on resolutions of inquiry. The majority in the House having control of the Rules Committee, having a majority on the committees, can secure an adverse report, we will say, upon a resolution of inquiry. Is it to be understood that that adverse report absolutely prevents the getting up of a resolution for a vote by the House?

Mr. BEGG. Mr. Speaker, will the gentleman yield?

Mr. CRAMTON. In a moment. If it is to be so held, then a minority no longer can get a vote in this House upon a resolution of inquiry perhaps addressed to an administration that is politically opposed.

Mr. BEGG. Conceding the resolution to be a privileged resolution, does the gentleman contend that the privilege carries to every Member in the House?

Mr. CRAMTON. Absolutely. I have not been able to find anything to the contrary, and it would be strange, indeed, if a man who introduces a resolution shall be held to lose the right to call it up in this House—a right equal to that of any other Member—unless there is something explicit in the rules to that effect, and there is not.

Mr. BEGG. Mr. Speaker, will the gentleman yield further?

Mr. CRAMTON. I want first to answer the gentleman's first question.

Mr. BEGG. That is sufficiently answered—that the gentleman believes that. That being true, let us say that on the calendar there is an appropriation bill, which is privileged, on next Monday or Tuesday. What is the difference between the appropriation bill and this resolution, so far as the rights of the membership of the House are concerned, other than the committee membership? Would the gentleman contend that if he had an appropriation bill in hand, which had the right of way on Tuesday next, and for some reason or other did not want to call it up, that I, as a nonmember of the committee, could call it up before the House?

Mr. CRAMTON. That has nothing more to do with the pending situation than has the old question of how old is Ann. The rule that applies to the present situation is the one that I have just read with reference to resolutions of inquiry and which does not apply to bills generally. There is a rule that provides that when there is an adverse report upon any bill, that bill shall lie upon the table, unless within three days some Member of the House—not only a member of the committee, but some Member of the House—asks to have that bill put on the calendar, where it belongs, and any Member of the House has the right to have that bill put on the calendar, notwithstanding an adverse report. I ask the gentleman from Ohio to show me a line here that restricts to a member of the committee the right to call up a bill on which there has been an adverse report.

Mr. BEGG. And I answer the gentleman in this way: That has nothing to do with it. The gentleman from New York [Mr. LAGUARDIA] had a perfect right under the rules to put his bill on the calendar, even though adversely reported.

Mr. CRAMTON. Where is there in the rules any statement restricting to a member of the committee the right to call up a bill or resolution on which there is an adverse report?

Mr. BEGG. The adverse report does not give it any higher privilege than would a favorable report.

Mr. CRAMTON. Where is there anything in the rules to give to a member of a committee any right that the gentleman from New York does not have?

Mr. BEGG. And I ask the gentleman where there is anything in the rules that gives them the right?

Mr. CRAMTON. I say that he has the right that goes with the introducer of a bill, which is at least equal to the right of any other Member of the House, and the only rule that I know of—and I am not at all infallible; I thought I could get some enlightenment from the gentleman—is that which provides that when an adverse report is presented on a bill that bill shall go to the table, unless within three days any Member of the House puts it on the calendar; but if there is any restriction as to the rights of the gentleman I think it is incumbent upon those who allege such restrictions to point them out. In the absence of them, if they are to hold that an adverse report from a committee on a resolution of inquiry shall deny to its introducer an opportunity to get a vote of this House upon the resolution, then you have done away with that outlet, which has been in this House historic as to the protection of the rights of the minority. The precedents are not numerous as to the rights of any Member to call up a resolution of inquiry after there has been a report, regardless of whether that report is favorable or adverse. I do not find any difference in the rules in the situation whether the report of the committee on a resolution of inquiry is favorable or adverse. I do not understand there is any difference in the situation. I can see that there may be a question in the minds of some as to whether a resolution of inquiry, having been reported either favorably

or adversely, then takes a privileged status in the House that would enable anyone to call it up for consideration as a privileged matter. The rule is very vague. This is a matter very largely of the practice of the House which has grown up rather than of express language in the rule. Logically it would seem an idle ceremony to require a committee to report within seven days and then not give any opportunity for consideration of the report after it should be made. If it was intended to give this a privileged status, it was necessary to insist upon an early report, and that having been done, that should not throw away that privilege by not giving consideration to the resolution.

The precedents are not numerous, because generally this has come up when the committee has refused to report, but in 1892, under Mr. Speaker Crisp, the Speaker overruled a point of order made upon a motion to discharge the committee in a certain matter, and in doing so "held that the duty to report within one week carried with it the right to report at any time during that period and, if delayed, the right to report at any time thereafter, and consequently the right of consideration when reported."

So, Mr. Speaker, I repeat. I am not concerned about the resolution. I assume that I shall not vote for it if it comes up for consideration, but I do not want a ruling that will put an end to any opportunity of Members or of a minority to call upon the administrative heads for information.

Mr. SANDERS of Indiana. Will the gentleman yield?

Mr. CRAMTON. I will.

Mr. SANDERS of Indiana. In the precedent cited by the gentleman was it an adverse or favorable report?

Mr. CRAMTON. There was no report.

Mr. SANDERS of Indiana. I thought the gentleman cited a case where there was——

Mr. CRAMTON. There was no report, but there was a motion to discharge the committee and consider the bill. But let me suggest this, Mr. Speaker: If a motion for consideration is not privileged, then when you join that motion which is not privileged with the motion to discharge which is held to be privileged, the whole thing would necessarily fall as not being privileged. If it is assumed that there is no privilege of consideration and only a privilege of securing a report, then you could not join that in one privileged motion.

Mr. SANDERS of Indiana. Is the gentleman able to cite any precedent where an adverse report has been made and held to be privileged?

Mr. CRAMTON. I will ask the gentleman from Indiana, who is one of the best authorities in the House, equal to my friend from Ohio who could give me no information on this point, where is there in the rules any provision restricting to a member of a committee the right to call up a bill or resolution to which there has been an adverse report?

Mr. SANDERS of Indiana. I would say to the gentleman there is not anything in the rules giving the right to anybody, and certainly there being no affirmative giving the right to anybody there would be no exception for such an imaginary rule, and I want to know if the gentleman will answer the question which I have propounded to him?

Mr. CRAMTON. Let us have it in the light of what information has been imparted.

Mr. SANDERS of Indiana. Can the gentleman state to the Chair any precedent where it has been held where an adverse report was made by a committee on a resolution of inquiry where the Chair held that the report has a privileged status and could be brought up as a privileged matter?

Mr. CRAMTON. I can not, but it is absolutely immaterial because the purpose of the resolution of inquiry, its very nature, is to be used by the minority. The majority in harmony with the administration can generally get their information, but if you are to hold that an adverse decision of a committee of this House shall prevent the House itself from having the right to decide the question, then you have done away with the resolution of inquiry. It has been urged that no one but a member of the Committee on the Judiciary can call this up. That is the first point, and I have demonstrated here by the evidence of these well-versed gentlemen that there is nothing to that point of order, that the committee reporting a bill adversely have done all that they can do, and that the right to call up that measure is not restricted to them now.

The SPEAKER. The Chair would like to have the authority in reference to that; the Chair has no authority on that point.

Mr. CRAMTON. As to what?

The SPEAKER. As to the fact that when there is an adverse report only members of the committee can call it up.

Mr. CRAMTON. I have been trying to get that information. There is nothing in the rule.

The SPEAKER. The Chair understood the gentleman to say that he had proven there was nothing on that point.

Mr. CRAMTON. I understand I have proven there is nothing on that point. I do not understand that there is anything in the rule giving to a member of the committee any right in reference to a bill or resolution on an adverse report which right is not shared with every other Member of the House.

The SPEAKER. Is there any other rule that gives such a right to any other bill?

Mr. CRAMTON. I may have overlooked some rule, but the only rule I find in reference to an adverse report——

The SPEAKER. The Chair means a report that was adverse. Where is there any rule that gives any member of the committee the right to call it up and not a Member outside of the committee?

Mr. CRAMTON. The precedents are that a man who introduces a resolution can call it up, and that right never has been challenged.

The SPEAKER. After an adverse report?

Mr. CRAMTON. Generally the motion is to discharge the committee and consider it, and I have not found any exact precedent to cover the case, any case where the right to consideration has been passed upon without a motion to discharge. Whether it is a favorable or adverse report is immaterial. There may be a chance to argue whether any Member has a privileged right to call it up after it has been reported. But if it should be held that a privileged right to consideration does not exist, then why should there be, first, a provision in the rule to require a report which could not be brought before the House? And, secondly, if it is not privileged, how could a joint motion to discharge the committee and call up a bill for consideration, to have both joined in one privileged motion, and both when joined together repeatedly sustained as privileged?

Mr. BLANTON. Will the gentleman yield for a question?

Mr. CRAMTON. I will.

Mr. BLANTON. If the gentleman from New York failed within three days to move to place this adverse report on the calendar, did not that bill go on the table, did not this whole matter go on the table?

Mr. LAGUARDIA. Mr. Speaker, permit me to say that "the gentleman from New York" has not failed to put it on the calendar.

Mr. BLANTON. But he has not moved within three days.

Mr. LAGUARDIA. Yes; I have.

Mr. CRAMTON. It was reported yesterday.

Mr. BLANTON. He has not moved to put it on the calendar. He has no right to move consideration.

Mr. CRAMTON. That is with reference to a bill, not a resolution.

Mr. BLANTON. They occupy the same status.

Mr. LONGWORTH. Mr. Speaker, it seems to me, on the other point of order, that this discussion is beside the mark if this resolution is not privileged. In my view it is clearly not privileged. This is not a resolution merely of inquiry, to ascertain certain facts, which is the only thing that gives it privilege. It asks for very much more than facts. For instance, in the very first sentence it asks for the "reason and cause for the dismissal of Robert J. Owens." Now, the words "reason and cause" plainly ask for information. It is a matter of discretion, discretion exercised with reference to the dismissal. And further along it asks for "proof for the legality of the possession of the said liquor," and so forth. Proof of legality is plainly a question involving the judgment of various men, the opinions of various men. This goes far beyond a resolution asking for facts. It is not a privileged resolution.

Mr. DYER. Mr. Speaker, will the gentleman yield?

Mr. LONGWORTH. Yes.

Mr. DYER. I will say to the gentleman from Ohio that the report filed by the Committee on the Judiciary contains a letter from the Secretary of the Treasury giving all the information, no doubt, available or possible, even, under the resolution voted up for consideration and sent to the Secretary.

Mr. LONGWORTH. Certainly. The word "reason" involves more than a mere detail of fact. It involves an opinion, questions of judgment, far more than any mere statement of fact.

Mr. GARRETT of Texas. Mr. Speaker, will the gentleman yield?

Mr. LONGWORTH. Yes.

Mr. GARRETT of Texas. I will ask the gentleman if the words "reason and cause," called for in the resolution of inquiry, were not words simply descriptive of the documentary evidence they wanted from the department?

Mr. LONGWORTH. The gentleman's reason for doing or not doing a particular thing might be a very different reason

from mine. His might be right and mine might be wrong. This can not be a question of fact—the reason for dismissal. The gentleman might have thought that his reasons were such and such, while mine might be otherwise. It goes clearly beyond an inquiry as to facts.

Mr. LAGUARDIA. Mr. Speaker, in reply to the point raised by the gentleman from Ohio [Mr. LONGWORTH], I am sure he can not seriously urge upon the Speaker that the wording in any resolution asking for "the reason or the cause" of the discharge of an employee, an act which had been accomplished, is asking for an opinion. The discharge in this case is something that has happened, and the resolution inquires for the reason and cause which resulted in the conduct of the department, not what they believe. Was this man disobedient? Did he violate the law? Just what was the "cause and reason" for the dismissal? The resolution asks for any reason that is in their possession that goes to the dismissal of this particular employee. There is no other way in the English language to frame a question to ascertain the cause of the dismissal of an employee. It is the same as asking for a bill of particulars on an indictment in a criminal action or a complaint in a civil action. You ask in such a case for the cause and reason, and the overt acts are stated in reply. That is what this resolution does, and nothing more. This inquiry asking for the cause and reason is nothing else than asking for a bill of particulars concerning the discharge of the employee named in the resolution.

Mr. DENISON. Mr. Speaker, will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. DENISON. This calls for proof of the legality of the act of an officer. That calls for argument.

Mr. LAGUARDIA. There is no such question involved in my resolution calling upon the Secretary of the Treasury for this information.

Mr. DENISON. It says "the legality of the possession of the said liquor."

Mr. LAGUARDIA. I am not charging that the Secretary of the Treasury had any liquor.

Mr. DENISON. You are asking for the proof that the law requires, as to the character of the proof; what proof they had upon which the legality of the possession of the liquor was based.

Mr. LAGUARDIA. Exactly. Matter of proof presented is a matter of fact.

Mr. HOCH. Mr. Speaker, will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. HOCH. If the words "reason and cause" signify simply cause, then what is the meaning of these words on line 6, "facts, evidence, and proof of the legality of the possession of the said liquor," upon which the action was based?

Mr. LAGUARDIA. The gentleman, as a lawyer, knows that this is not asking for a conclusion or an opinion, but simply demanding the facts upon which an act was based.

Mr. HOCH. If that is all, why did not the gentleman simply say, as in paragraph 1, "the facts and evidence upon which the dismissal of Mr. Robert J. Owens was based"?

Mr. LAGUARDIA. The facts and the evidence would be limited to certain acts and conduct on the part of the department. The consideration of these facts as the reason for dismissal is all limited to matters of fact. It does not call for an opinion or a conclusion. The point of order raised that this resolution itself now is not privileged simply shows the hopelessness of the argument of the gentleman who raised the point of order, first, that it could not be called up by anybody but the committee. Now, they are relying upon this last point of order, that it is not privileged in itself, to prevent its consideration.

Mr. TINCHER. Mr. Speaker, will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. TINCHER. What is the meaning of these words, "and proof of the legality of the possession of the said liquor"?

Mr. LAGUARDIA. The gentleman knows that under the law, when liquor is seized, the burden of proof establishing the legality of possession is upon the owner. Now, there must have been some evidence or proof to justify the return of this liquor within 24 hours after the seizure. That is what my resolution calls for. [Cries of "Vote!"]

The SPEAKER. It seems to the Chair that this question is rather academic. It is certainly so if what the gentleman from Missouri [Mr. DYER] states is the fact, that in the report are given the full reasons of the department. But it is none the less to be decided.

Three points of order are made. As to the day, the Chair finds that the order yesterday was simply that bills on the Private Calendar, reported from the Committee on Claims, be in order for consideration to-morrow. It seems to the Chair that does not prevent the consideration of other privileged business, if the House so desires.

The second point of order is: Can it be brought up by the gentleman from New York [Mr. LAGUARDIA], he not being a member of the committee which made the report? This rule was adopted in 1880, and when it was first reported by Mr. Randall it simply provided that any motion of inquiry should be referred to a committee. Then it was contended by some Members that there should be some constraint on that committee, and, therefore, the addition was made that such committee should report within one week, and since then, without any special provision in the rule, it has been held that if the committee did not report within that week the Member who offered the resolution should have the right to bring it up as a matter of privilege. There is no special reason, given in any decision the Chair has been able to find, for establishing that right, but the Chair supposes it is to compel the committee to do its duty. It is logical, if the committee does not do its duty, that the House should have the right, without the action of the committee, to immediately proceed to consider the subject. But there is nothing in the rule which provides what shall be done when the committee does report, and consequently it has been held that such a report is privileged, and, it seems to the Chair, it must stand just like any other privileged report of a committee. The Chair can see no reason for any difference in the privilege, whether it is adverse or whether it is favorable. But the Chair is unable to see any reason why this case should be held by decision to be different from all other cases. It is always held that the only person who can bring up a bill is the Member authorized by the committee. There are some privileged bills now on the calendar which are subject to be brought up, but nobody can bring them up except the member of the committee authorized to do so, and in the absence of any expression in the rules or of any precedents by a decision the Chair does not feel authorized to hold that there is any different right in this case than in any other case.

Then as to the point that is made by the gentleman from Ohio [Mr. LONGWORTH], the rulings have been continuous that such a resolution must call simply for the facts and not for opinions. It does seem to the Chair that calling for the reason why the act was done is calling for an opinion by the official who performed that act. It is asking his motive. Of course, the language could be drawn so as to ask the facts on which he based his action, but to ask the motive and the reason of his action, it seems to the Chair, also makes this resolution subject to the point of order. So the Chair sustains the point of order.

SETTLEMENT OF THE INDEBTEDNESS OF THE REPUBLICS OF POLAND AND LITHUANIA

Mr. CRISP. Mr. Speaker, by direction of the Committee on Ways and Means I present two privileged reports from that committee for reference to the calendar, one recommending the settlement of the indebtedness of the Republic of Poland to the United States of America and the other recommending the settlement of the indebtedness of the Republic of Lithuania to the United States of America.

The SPEAKER. The gentleman from Georgia presents two privileged reports from the Committee on Ways and Means, which the Clerk will report.

The Clerk read as follows:

Report to accompany the bill H. R. 10650, to authorize the settlement of the indebtedness of the Republic of Lithuania to the United States of America.

The SPEAKER. Referred to the Union Calendar.

The Clerk read as follows:

Report to accompany the bill H. R. 10651, to authorize the settlement of the indebtedness of the Republic of Poland to the United States of America, and for other purposes.

The SPEAKER. Referred to the Union Calendar.

CLAIMS ON THE PRIVATE CALENDAR

Mr. EDMONDS. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House for the further consideration of claims upon the Private Calendar.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House for the consideration of claims upon the Private Calendar, with Mr. SANDERS of Indiana in the chair.

WILLIAM J. OLIVER

Mr. EDMONDS. Mr. Chairman, when we closed the House last night we had under consideration Private Calendar No.

133, H. R. 3132. I ask for the further consideration of that bill at this time.

Mr. MILLER of Washington. Mr. Chairman, may I ask whether any bills of any character, except those reported by the Claims Committee, will be considered at to-day's session?

The CHAIRMAN. The order is that claims on the Private Calendar be in order for consideration on Saturday.

Mr. MILLER of Washington. And none reported by the War Claims Committee will be considered at to-day's session is the understanding?

The CHAIRMAN. The Chair does not recall what the RECORD shows.

Mr. BLANTON. Mr. Chairman, I make the point of order that the order asked for by the majority leader was that bills reported by the Claims Committee on the Private Calendar should be in order, and that would exclude bills reported by the War Claims Committee.

Mr. CHINDBLOM. Mr. Chairman, I make the point of order that we are acting under the order of the House made to-day, and that was that the House resolve itself into the Committee of the Whole House for the consideration of bills from the Committee on Claims on the Private Calendar. Whatever may have been prior orders, we are now acting under that order made to-day.

The CHAIRMAN. The Chair thinks that the point made by the gentleman from Illinois [Mr. CHINDBLOM] is well taken. The motion was made that the House resolve itself into the Committee of the Whole House for consideration of claims on the Private Calendar, and upon that suggestion the Chair will respond to the parliamentary inquiry of the gentleman from Washington by stating that they are the only ones that will be considered by the Committee of the Whole House at this sitting. The Chair will call the gentleman's attention to the fact that that applies only to this sitting and does not necessarily apply to the entire day.

Mr. BLANTON. Mr. Chairman, a parliamentary inquiry, if the Chair will permit. The order agreed upon by the majority leader yesterday was, "Mr. Speaker, * * * I ask unanimous consent that bills reported from the Committee on Claims be in order for consideration to-morrow." That limited bills that could be considered to-day to those which were reported by the Committee on Claims, and none other. That was the order that was agreed upon by the House and made in order yesterday.

The CHAIRMAN. The Chair thinks that was the order. Of course, at the present time, as pointed out by the gentleman from Illinois [Mr. CHINDBLOM], irrespective of any order, we are operating upon the motion carried by the House to which there was no point of order directed, and that motion operates and binds the Committee of the Whole House so far as the present sitting is concerned.

Mr. EDMONDS. Mr. Chairman, last evening when the committee rose I had half an hour's time coming to me out of my time, which I had reserved. I will now yield as much time as he may need out of that time to the gentleman from Oklahoma [Mr. THOMAS] to continue his discussion of the bill that is before the House.

Mr. THOMAS of Oklahoma. Mr. Chairman and gentlemen of the committee, what I shall have to say will be in supplementing what I had to say on yesterday. I do not take the floor for the purpose of making a speech, but only for the purpose, if possible, of assisting the committee in arriving at a just conclusion in relation to this claim.

I desire to call the attention of the committee to a peculiar proposition, that the Congress is the only tribunal that a citizen can go to in a case of this kind. When a citizen has been injured by his Government or by its agents, there is no court that he can go to and claim redress. He must depend upon the Congress of the United States. In this case, whether Mr. Oliver has been injured or not, is a question for this jury to determine, and in this particular case the Congress is the jury.

Briefly I want to call attention to the conditions that prevailed around Mr. Oliver and his plant at the time this injury was alleged to have been done. Mr. Oliver, in Knoxville, Tenn., had a prosperous manufacturing plant. He was engaged in both commercial manufacturing and munitions making or manufacturing. Because, as he claims, of the injury that was done him at this time the plant he had then is now in idleness. It has been dismantled, and it is a bankrupt concern. Mr. Oliver at that time had a railroad in operation in Tennessee. He had paid something like $700,000 for this railroad in its building. When he was done the injustice that he claims was done him these properties were taken over and put in the hands of a receiver and finally into bankruptcy. His railroad was sold for $50,000 and his manufacturing plant did not sell for enough to pay the obligations existing against it.

Mr. COLLINS. Will the gentleman yield?

Mr. THOMAS of Oklahoma. Gladly.

Mr. COLLINS. If any damage was done, it seems to me it was done the Oliver Manufacturing Co. Why should this claim be payable to W. J. Oliver?

Mr. THOMAS of Oklahoma. The testimony shows that Mr. Oliver was practically the sole owner of the stock of the company, and Mr. Oliver having suffered damage personally in addition to his financial damage, the committee thought it would be right that any judgment rendered in his favor by the Congress should be made to Mr. Oliver personally and not to the corporation.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. THOMAS of Oklahoma. Yes.

Mr. LAGUARDIA. What is there to prevent the corporation bringing in a claim for damages later on?

Mr. THOMAS of Oklahoma. Any claim that the corporation might bring in must be brought before the Congress, and the Congress having heard and adjudicated the claim of Mr. Oliver, I think we can be safe in assuming that with such careful considerators of claims as we have upon the Claims Committee of this House the corporation would not get very far in prosecuting a claim of that kind.

Mr. LAGUARDIA. There is no provision in the bill that covers all claims of all of these concerns.

Mr. THOMAS of Oklahoma. I think you are right so far as the bill is concerned.

Mr. TAYLOR of Tennessee. If the gentleman from Oklahoma will allow me to interrupt, I would suggest that the corporation is now out of business and has been wound up.

Mr. LAGUARDIA. It is out of existence now?

Mr. TAYLOR of Tennessee. Yes.

Mr. COLLINS. But the damage was done to the corporation, as I understand it, and not to Mr. Oliver, and yet the bill is for the relief of some one who was not damaged.

Mr. THOMAS of Oklahoma. Mr. Oliver suffered the entire damage that was done to the corporation.

Mr. STEPHENS. Is it not a fact that Mr. Oliver was the corporation?

Mr. THOMAS of Oklahoma. In effect that is true.

Mr. LAGUARDIA. That could not be legally true, of course.

Mr. BLANTON. Will the gentleman yield?

Mr. THOMAS of Oklahoma. Yes, sir.

Mr. BLANTON. If I understood the gentleman correctly yesterday, the gentleman stated that within a few days after the taking over of the property by the Government Mr. Oliver was struck by a truck and injured.

Mr. THOMAS of Oklahoma. That is correct.

Mr. BLANTON. That was not a Government truck; that was a private truck.

Mr. THOMAS of Oklahoma. The record is silent on that proposition.

Mr. BLANTON. But, as a matter of fact, within the knowledge of the gentleman, that was a private truck.

Mr. TAYLOR of Tennessee. It was a private truck.

Mr. BLANTON. It was a private truck, so the gentleman from Tennessee [Mr. TAYLOR] says. I understood the gentleman further to say that intermittently since then Mr. Oliver has been in such a mental condition he did not know what was going on from time to time; is that the case?

Mr. THOMAS of Oklahoma. At different times; that is correct.

Mr. BLANTON. Then, if that is the case, how does the gentleman know, and how does the gentleman from Tennessee [Mr. TAYLOR] know, and how does the committee know that this alleged $8,000 worth of Liberty bonds have never been returned to Mr. Oliver?

Mr. THOMAS of Oklahoma. I will answer that question by saying the records are conclusive, and there is nothing suggested to the contrary, that these bonds have not been returned to Mr. Oliver or his agents. At the time when he was ill and injured, and suffering in the hospital, he had agents, of course, representing him, and if these bonds had been returned the records would have so shown.

Mr. BLANTON. If Mr. Oliver has had a lapse of memory, which occurs frequently when a man is in such a condition as he is reported to be in, how is he now able to tell you, if he did lose $8,000 in bonds, that they have not been returned to him? He at some time may have hypothecated them or used them or sold them and now has a lapse of memory concerning same—how are we to determine when he is subject to inter-

mittent loss of memory, that these bonds have not been returned to him? How do we know but that he has used them?

Mr. THOMAS of Oklahoma. It is my opinion, and I think the evidence is conclusive, that these bonds have not been returned; that Mr. Oliver suffered the loss of the bonds and in the sum of $8,000.

Mr. RAMSEYER. Will the gentleman yield?

Mr. THOMAS of Oklahoma. Yes.

Mr. RAMSEYER. I would like to ask the gentleman how much weight are Members supposed to give to the letter from the Secretary of War incorporated in this report. Is it to be given weight as a reliable and truthful statement?

Mr. THOMAS of Oklahoma. I think so.

Mr. RAMSEYER. On page 5 in the second paragraph of the report the Secretary of War says:

> During the recent war the United States entered into three shell-manufacturing contracts with the William J. Oliver Co. and one additional supplemental contract for overruns or excess production under an original contract. All of these contracts were fully performed. All shell manufactured to the total amount covered by contract were received and accepted by the United States, the full contract price paid therefor, and subsequently claim settlements were negotiated between the Oliver Manufacturing Co. and the Government for extras, increased facilities, etc., amounting to approximately $66,000 in addition to the contract price of the shell and including practically the full amount of every item claimed at the time.

Mr. THOMAS of Oklahoma. Answering that proposition I will say that Mr. Oliver's claims were submitted in two classes—class A and class B. In class A there were three items covering three contracts that he had with the Government. The committee decided after considering these three items that because they were covered by contract claimant should come to Congress and ask the privilege of going into the Court of Claims.

Mr. RAMSEYER. Is it true or not that every claim for extras of the Oliver Manufacturing Co. presented to the department has been settled?

Mr. THOMAS of Oklahoma. No; that is not true. At a later date the claims were referred to the department, when Mr. WAINWRIGHT was Assistant Secretary. Mr. WAINWRIGHT turned them down because they were not filed in time. All claims under the Dent Act were to be filed by June 30, 1919. These claims were not filed during that time.

Mr. RAMSEYER. That is a different proposition. The claims that you claim in this bill would not be considered anywhere except in Congress, and the gentleman stated yesterday that the Government took charge of this plant in October, 1918, and did not return the plant until February, 1920; that it was under the charge of Government agents, and because it was under the charge of Government agents the expense of making the shells was greatly enhanced. Now, the Secretary of War says in the third paragraph on page 5:

> On October 4, 1918, during the progress of work under these contracts, Mr. Oliver was arrested by agents of the Department of Justice as a result of charges said to have been instigated by labor representatives, alleging conspiracy to defraud the Government by the making of defective shell and certain overt acts in pursuance of such conspiracy. Mr. Oliver and other executives of the plant were placed under arrest and books and records of the company were seized. The Oliver Manufacturing Co. designated a trustee to carry on the business of the company, who continued in charge until approximately March 1, 1919, by which time the contracts had been completed. The claim settlements mentioned above were negotiated either by the trustee or other authorized representatives of the corporation.

That is, the contract the Oliver Co. had with the Government was completed March 1, 1919. Of course, the Government had no further interest in it. So it seems that the claim made here yesterday that the Government continued after that in charge of the plant is absolutely without foundation and is contrary to the statement of the Secretary of War. I do not see how we can go on the assumption that the Secretary sent a letter to the committee full of inaccurate statements. If I had time I would like to read other parts of the report.

Mr. THOMAS of Oklahoma. The testimony shows that on the 4th of October this plant was surrounded by soldiers, entered by deputy marshals, accompanied by Army officials and the district attorney. Mr. Oliver was arrested and with 11 of his foremen taken to the customhouse. While there under arrest in the presence of the Army officials representing the Ordnance Department of the Government they did agree on a trustee. Mr. Oliver was placed in a position where he had to accept the suggestion of the Ordnance Department and the district attorney.

Mr. RAMSEYER. Who named the trustee?

Mr. THOMAS of Oklahoma. The district attorney and agents of the Ordnance Department of the Government.

Mr. RAMSEYER. The Secretary of War says positively that the corporation named the trustee.

Mr. THOMAS of Oklahoma. I want to read from the hearings, page 23. This is from the testimony of Mr. Oliver himself.

Mr. BLANTON. Mr. Chairman, this bill as introduced seeks to pay out $1,438,000. We surely ought to have a quorum here to consider this matter, and I make the point of order that there is no quorum present. I think the whole membership should hear the discussion.

The CHAIRMAN (Mr. CHINDBLOM). The gentleman from Texas makes the point of order that there is no quorum present. The Chair will count. [After counting.] One hundred and four Members present, a quorum.

Mr. THOMAS of Oklahoma. Mr. Chairman, on page 23 of the hearings we have the following language taken from the contract of trusteeship itself. In the trusteeship there is this provision:

> For sufficient and satisfactory reasons between the parties and those in interest, the president of the said W. J. Oliver Manufacturing Co. hereby agrees that during the term of this trust agreement he will not have or assume any direction or control over the operation of said plant or to interfere with the trustee in any manner in his operation of said properties, under the terms of this agreement, and will refrain from going in or on the premises covered by this contract.

Later on in the testimony we have the following conditions surrounding the making of the contract:

> Now, I will ask you, Mr. Oliver, what were the conditions under which you signed this trust agreement?
>
> Mr. OLIVER. There were a number of Army officers in the room and I was under arrest, and I had to do anything they wanted me to do.
>
> Mr. HUMPHREY. What, if anything, did they say they would do if you did not sign it?
>
> Mr. OLIVER. They said, "Sign, you ———; you will not need any of this when we get through with you."
>
> Mr. HUMPHREY. What did they say they would do if you did not sign this?
>
> Mr. OLIVER. They arrested me.
>
> Mr. HUMPHREY. I mean, what did they say, if anything, they would do with your plant if you did not sign?
>
> Mr. OLIVER. They had the plant. They had the men there with drawn pistols, 35 deputy marshals in the room.

Mr. RAMSEYER. Right there, if I may interrupt the gentleman, does the gentleman claim that that happened the day that he was arrested?

Mr. THOMAS of Oklahoma. The record shows that this contract was entered into the afternoon of the day of his arrest. It appears this trusteeship agreement had been worked out in the minds, if not on paper, of those responsible for this atrocity.

Mr. RAMSEYER. He said certain Army officers stood there and made him do this. Did the committee get the names of those officers and subpœna them as witnesses?

Mr. THOMAS of Oklahoma. The record can be had on that proposition, but it makes no difference so far as I can see what the names were. If these Army officers were there with drawn revolvers, as the evidence shows, what their names were is inconsequential and immaterial. We did not get their names.

Mr. RAMSEYER. If we had the names, their testimony would corroborate either Mr. Oliver or the Secretary of War.

Mr. EDMONDS. Mr. Chairman, if the gentleman will permit, we are not proposing in this bill to pay anything that has already been paid. We are proposing to pay the difference occasioned by the trusteeship in the cost of the manufacture of the shells. In other words, the $101,000 is the difference of $3.25 per shell in the cost of the manufacture between what Mr. Oliver would have manufactured them for, or was manufacturing them for, at the time they took the plant over and what they cost under the management of the trusteeship.

Mr. RAMSEYER. I assume that there is a conflict in the evidence before the House as to whether this trustee was appointed by the corporation or by the Government. The Secretary of War said that this trustee was appointed by the corporation. Therefore, for anything that happened under him certainly you could not hold the Government liable.

Mr. EDMONDS. But it will be remembered that this man was appointed trustee by force, not by the desire of the corporation. The corporation was bound, of course, to protect this property, but the War Department insisted upon the appointment of the trustee.

Mr. RAMSEYER. That statement again is sharply contradicted by the Secretary of War.

Mr. EDMONDS. The Secretary of War had nothing to do with that. The Department of Justice had that in hand.

Mr. MORTON D. HULL. Mr. Chairman, will the gentleman yield for a question?

Mr. EDMONDS. The gentleman from Oklahoma has the floor.

Mr. THOMAS of Oklahoma. I yield.

Mr. MORTON D. HULL. I would like to know how the gentleman determines what it would have cost.

Mr. EDMONDS. By the actual cost in the books.

Mr. MORTON D. HULL. What it would have cost?

Mr. EDMONDS. We have to take his performance before that and what it was costing him at the time he was making them.

Mr. STEPHENS. They have the statement of an expert accountant.

Mr. MORTON D. HULL. But the loss was due to his absence from the business.

Mr. EDMONDS. As I understand the matter, the production went away down.

Mr. MORTON D. HULL. His absence was due to the accidents that happened to him, was it not?

Mr. EDMONDS. Not at all. They would not allow him to go on the property.

Mr. TINCHER. Does not the agreement provide that he shall not have anything to do with this business during the time that they were there?

Mr. THOMAS of Oklahoma. Certainly.

Mr. TINCHER. They barred him from his business.

Mr. THOMAS of Oklahoma. Answering the question of the gentleman from Iowa [Mr. RAMSEYER], I want to make it clear that this bill is not seeking to recover any damages that could have arisen from the contract itself. The Secretary of War has settled all damages arising under the contract. The Secretary of War said that if there be additional damages, those damages are up to Congress, that he can not consider them because he had not jurisdiction, and it is that particular class of damage that can not be considered by the Secretary of War that Mr. Oliver is presenting to the Congress.

Mr. GILBERT. Mr. Chairman, if the gentleman will yield, answering the gentleman from Iowa, it does not seem to me to make any difference who named this trustee, whether Mr. Oliver or the Government. If the trustee was unnecessarily and unjustly forced upon this man, and this loss as a consequence was sustained, it is really immaterial who had the naming of the trustee.

Mr. THOMAS of Oklahoma. Answering the suggestion made by the gentleman from Texas that Mr. Oliver was injured and as a result of his injury he could not claim damages from the Government, the record shows that Mr. Oliver was going to the courthouse from his home some 2 miles in the country, over a road which probably had no sidewalk upon it; he was walking in the road; that in going to the courthouse he got out of the way of one automobile, but stepped in the way of a truck. This truck struck him on the head. For many months he lingered between life and death. He survived. His physical body has been wrecked. His mind at times, at least, has been injured.

When Mr. Oliver came before the committee he could only come by the assistance of a cane and an attendant. I understand his condition now is worse than then. From a man physically sound and mentally alert at that time, through this incident he has been rendered a man physically broken and rendered mentally, I might say, unfit. Now, had it not been for this transaction he would not have been in the road; had he not been in the road he would not have been hit by this truck, and had he not been hit by the truck he would not have been injured as he is to-day.

Mr. DOWELL. Will the gentleman yield?

Mr. THOMAS of Oklahoma. I will.

Mr. DOWELL. Does the gentleman believe that this House can consider the question that this man was a wreck and prosecuted for something of which we may concede he was not guilty, and by reason of things pending at the courthouse he got on the street and was run over by a truck, and that therefore the Government should pay by reason of the negligence of somebody for that injury?

Mr. THOMAS of Oklahoma. Mr. Oliver has not contended before this committee that he should be compensated for injury. It is only the question——

Mr. DOWELL. No; but the gentleman is making that as a reason why this should be paid, because if it had not been for this this accident would not have been.

Mr. THOMAS of Oklahoma. I did not so intend. I was only answering the gentleman from Texas that Mr. Oliver was mentally deficient, and possibly during some of his mental confusion he may have received some of the bonds back from those who took them.

Mr. TINCHER. Will the gentleman yield?

Mr. THOMAS of Oklahoma. I will.

Mr. TINCHER. I understand it is proposed to pay Mr. Oliver in this bill the amount which cost this plant extra to manufacture these shells by reason of taking it away from him and turning it over to the Government, and the gentleman is mentioning the fact of his injury in defense of the intimation, perhaps, that he would not need the money here because of the injury or should not recover because he might have done something which he did not remember.

Mr. THOMAS of Oklahoma. Let me say further on this point before yielding. I realize this is not in that class of claims which could be presented upon the written code. I realize that neither the Government nor the State can be sued without their consent. I realize when a Government, National or State, arrests a man under a charge and presents its case in court and that case fails, the fact that the man was arrested and damaged gives no claim against the State or Government. But, gentlemen, this is a war-time proposition. It is not in that class of cases that might arise in peace times, for in peace times no owner or manager of a company would be taken, a cordon of cavalry thrown around his place of business, his property placed in the hands of an agent not appointed by the confiscating power. That only occurs in war times. This is a war-time case, and such a one I have not seen before.

Mr. BURTNESS. Will the gentleman yield?

Mr. THOMAS of Oklahoma. I will.

Mr. BURTNESS. I am a little curious to ascertain this. The person placed in charge of this plant I believe was named McCoy?

Mr. THOMAS of Oklahoma. That is the name in the record.

Mr. BURTNESS. Who was he?

Mr. THOMAS of Oklahoma. He was the man selected or agreed upon by the Ordnance Department, the district attorney, and the bankers of Knoxville, Tenn.

Mr. BURTNESS. Was he a banker in Knoxville?

Mr. THOMAS of Oklahoma. If my memory serves me, he was a banker there.

Mr. BURTNESS. Was he a banker that the Oliver Co. had been doing business with?

Mr. THOMAS of Oklahoma. I could not say on that proposition.

Mr. BURTNESS. Mr. Oliver, page 6 of the testimony says this in answer to a question put to him by his own attorney, Mr. Humphrey.

> He was a banker that I was doing business with. He was put in with the consent of the Government officials.

If you read Mr. Oliver's testimony correctly apparently Mr. McCoy was selected by the corporation and the Government consented to his selection rather than selected by the Government and consented to by the Oliver people.

Mr. THOMAS of Oklahoma. I have just read the testimony, and it is for the committee to determine for themselves whether such appointment would have been made had this been in peace time rather than war time.

Mr. BURTNESS. Does the gentleman know whether or not the creditors of the Oliver Co. were willing for Mr. McCoy's selection as trustee?

Mr. THOMAS of Oklahoma. There is no record of that as far as I know.

Mr. BURTNESS. Who was Mr. Humphrey who appeared before the committee?

Mr. THOMAS of Oklahoma. If I am correctly advised he was for a long time an honored member of this body and at the time mentioned was acting in behalf of Mr. Oliver as his attorney in presenting his claim before the committee.

Mr. BURTNESS. On page 2 of Mr. Oliver's statement appears the following:

> On the day following, October 5, 1918, in order to prevent the War Department from commandeering the plant and taking exclusive control and charge of the same, and in order to protect, as they believed, the commercial business of said plant, as well as to facilitate the carrying out of Government contracts, and upon the urgent solicitation of the largest creditors of said manufacturing company, said company made a deed of trust appointing William J. McCoy as trustee, and turned over to said trustee the plant and business of every kind and character connected therewith.

Now, that is a fair summary of the testimony, in so far as the turning of the plant over to the trustee is concerned.

Mr. BYRNS of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. THOMAS of Oklahoma. I yield to the gentleman from Tennessee.

Mr. BYRNS of Tennessee. As the gentleman from Kentucky [Mr. GILBERT] very pertinently suggested a while ago, it seems to me it makes no difference who appointed the trustee, whether he was appointed by the company or by the Government with the consent of the company. The fact of the appointment of the trustee was made necessary by the unwarranted action of the Government, regardless of who appointed him. If the Government had not taken over this plant the appointment of a trustee would not have been necessary.

Mr. THOMAS of Oklahoma. I will just say in conclusion that the claims submitted to the committee embrace numerous items. The total of the claims is something like $1,400,000. The committee in considering these items decided that many of them could not be considered or recommended for the consideration of the Congress. The committee came to the conclusion that certain of these claims should be embodied in a jurisdictional bill giving Mr. Oliver the right to go into the Court of Claims. The committee picked out three items which it was willing to recommend for the consideration of this Congress.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. THOMAS of Oklahoma. I ask unanimous consent, Mr. Chairman, to proceed for five additional minutes.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired. The gentleman from Oklahoma [Mr. THOMAS] asks unanimous consent to proceed in his own time for five minutes. Is there objection?

There was no objection.

Mr. THOMAS of Oklahoma. The first item was the loss occasioned because of the increased cost of production of these shells. The testimony shows that when the plant was taken over by the Government there were 31,300 shells yet to be made, and that the cost of producing these shells increased $3.25 per shell under Government supervision over and above the cost under Mr. Oliver's supervision, and by multiplying the 31,300 by $3.25 you derive the amount of the first item. We recommend that that element of damage be allowed.

The second element is for the loss of Liberty bonds that were taken away and not returned. Mr. Oliver is clearly entitled to be reimbursed for the loss of those Liberty bonds, in the sum of $8,000. That is item No. 2.

Mr. ROMJUE. Mr. Chairman, will the gentleman yield?

Mr. THOMAS of Oklahoma. Yes.

Mr. ROMJUE. May I inquire of the gentleman were those bonds registered?

Mr. THOMAS of Oklahoma. The record does not state that they were registered.

Element No. 3 was the loss of salary. The record shows that Mr. Oliver was drawing $50,000 a year salary from this company as president and managing officer and that he had been drawing that sum for some time. The record shows that at about this time Mr. Oliver was offered $100,000 for his services by a shipbuilding company in Florida and that at the request of the War Department, or officers thereof, he turned that offer down. He was receiving $50,000 per annum. That is $4,158 per month. The record shows that he was deprived of the possession of his property for something like 14 months, during which time he did not receive his salary. It was for the loss of salary that item No. 3 covers, figured for the time he was deprived of same. Those three items—the loss in the manufacture of the shells, the loss of the Liberty bonds, and the loss of his salary—make up the amount recommended by the committee.

Mr. HUDSPETH. Mr. Chairman, will the gentleman yield?

Mr. THOMAS of Oklahoma. Yes.

Mr. HUDSPETH. Does not the record also show that when the Government took over this man's plant he was a wealthy man and had all this property and that now he is a hopeless invalid and is not worth a dollar in the world?

Mr. THOMAS of Oklahoma. Yes.

Mr. BLANTON. Does the gentleman dissent from this statement made by Secretary Weeks?—

> In order to remove any misapprehension that might be occasioned by the language of this bill I feel constrained to point out that the plant was not seized or held by the War Department. Mr. Oliver and his associates were arrested, the plant was searched, and certain records were seized by officials of the Department of Justice, but the Oliver Manufacturing Co. retained possession of the plant and operated it under the immediate direction of a trustee appointed by the company. Officers of the Ordnance Department remained at the plant in an advisory capacity during operation by the trustee, just as they had been at the plant in the same capacity prior to Mr. Oliver's arrest.

Does the gentleman dissent from that?

Mr. THOMAS of Oklahoma. The committee takes the view that while the War Department did not seize the plant, it was seized under the order of the Department of Justice by deputy marshals who were under the Department of Justice. The committee takes the view that it is immaterial what department took charge of the plant. Possession was taken by the Department of Justice at the instance of the War Department.

The CHAIRMAN. The time of the gentleman from Oklahoma has again expired.

Mr. BLANTON. Mr. Chairman, I ask that the gentleman from Oklahoma may have two minutes more.

Mr. KETCHAM. Make it five minutes.

The CHAIRMAN. Five additional minutes is asked for. Is there objection?

There was no objection.

Mr. BLANTON. I would like to ask the distinguished gentleman from Oklahoma this question: The Government claims that whatever it did, it did it believing that this man was engaged in a conspiracy to manufacture defective shells. Here is what the Secretary of War says:

> It is possible that the arrest and prosecution of Mr. Oliver was characterized by incidents that gave rise to justifiable criticism and that financial loss may have resulted therefrom.

The department holds, the Secretary of War holds, that whatever criticisms were made of Mr. Oliver and his friends were justifiable. What does the gentleman say as to that?

Mr. THOMAS of Oklahoma. The worst thing that is shown against Mr. Oliver is this: When these shells were made it was necessary to put a thin disk of lead between the outer shell and the inside contents, and when the supply of these disks ran out it became a question whether to lay off the men until a further supply of disks could be obtained or continue in operation by making his own disks. Mr. Oliver, with the consent of the Government inspectors, obtained the equipment necessary to make his own disks, and by means of those appliances he cut out the disks himself. That is the worst thing that was brought out against Mr. Oliver as to the manufacture of "defective shells."

Mr. KETCHAM. Mr. Oliver was engaged in filling a contract for the manufacture of 100,000 shells, and he had 60,000 shells completed and 30,000 yet to complete. Does the testimony in the record show any evidence at any point of any difference in the character of the shells manufactured before and after the time the shells were seized?

Mr. THOMAS of Oklahoma. Everything that was done was done under the inspection of agents of the Ordnance Bureau.

Mr. BOX. Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to revise and extend his remarks. Is there objection?

There was no objection.

Mr. BLANTON. Mr. Chairman, in order that the gentleman may be heard, I make the point of no quorum. It is very evident there is no quorum present.

The CHAIRMAN. The gentleman from Texas makes the point of order there is no quorum present. The Chair will count. [After counting.] One hundred and seven gentlemen are present, a quorum.

Mr. BOX. Mr. Chairman and gentlemen of the committee: The facts in this case are many and much confused. I especially request that Members permit me to proceed until I have finished my effort to state the facts to the House and thereafter, if I have time, I shall be glad to make an effort to answer any question.

This is just such a state of facts as is most difficult to deal with. They are foggy, inconsistent, broken in every way, and of the kind that it is most difficult to ascertain and properly estimate. If I as an attorney were called upon to inquire into the facts in this case and to ascertain them and report upon them satisfactorily, I think the time required would be measured by months. I am the only member of the committee objecting to the payment of the claim, but it seems to me positively absurd to propose to pay this money on this claim upon the showing made.

The claim grows primarily out of labor troubles which began in Mr. Oliver's plant something like a year and a half before his arrest. There had been a strike; a labor man had been

assaulted on the premises or somewhere about them. There was a suit, I believe, against Mr. Oliver for $25,000 damages, in some manner connected with that. Then came the making of a large number of complaints by certain employees of Mr. Oliver, apparently with the advice and assistance of the attorney representing the local labor union, resulting finally in his arrest. Then on the day of his arrest, when the plant was seized for the time being, or the next day, Mr. Oliver, probably because of his arrest and because of the urgent insistence of creditors, executed a deed of trust turning his plant over to a trustee to operate it. Then four or five days afterwards, or within 30 days—some of the statements are that it was within 30 days and some 4 or 5 days, but I think it is about 34 days—Mr. Oliver suffered a personal injury. The only theory on which the Government can be held liable for his personal injury is that he had a complaint lodged against him and was going to the courthouse to appear before the commissioner on the hearing. While he was in the road going to the courthouse to answer this complaint some person, to your committee unknown, ran over him with a truck and seriously injured him, since which time it is said, I think correctly, he has been a physical wreck and, to a large extent, a mental wreck; he has been paralyzed. That condition began within either 4 or about 34 days after his arrest.

The concern was badly involved financially. It had not paid a dividend since 1913. Mr. Oliver was indebted to the plant. He was its principal stockholder. I think these facts are not shown in the report, but papers in the files in the case show that he held all but about 5 shares of about 575 shares, of $100 each, issued by the corporation.

There was a claim first made of $1,438,095.61, and my judgment is that all of it is as well established as any of it.

First, I call your attention to the fact that the concern was heavily indebted; that Mr. Oliver was merely a stockholder in it, the principal stockholder, and its president and general manager. I suggest to you as business men and as lawyers that Mr. Oliver has no right to any of the proceeds of that corporation or any of its assets until upon liquidation its general creditors, to say nothing of the holders of bonds secured by mortgages, have received their compensation.

The gentleman who presented this bill proposed that the corporation be paid $1,438,095.61. The committee has amended it, providing this proposed payment of $170,757.86 to Mr. Oliver, the principal stockholder of this insolvent corporation, which passed into the hands of a trustee the next day because of these difficulties and because of the urgent insistence of creditors—that trustee being a banker, Mr. McCoy, connected with the bank where the company did business.

To indicate how complicated, confused, and difficult of ascertainment the state of the concern's affairs has been and is in, I call your attention to the fact that $44,101.62 has been incurred as auditors' fees in efforts to straighten out the affairs of that concern.

Three or four different firms of auditors, whose fees amounted to that, have been engaged in efforts to ascertain and state its condition, so tangled were its affairs. I only mention that to show you the utter absurdity of a committee sitting for two or three hours and hearing a few ex parte statements and then undertaking, at the expense of the Treasury of the United States, to make good the items of damages involved in the bill as amended and reported by the committee.

Mr. BEEDY. Will the gentleman yield?

Mr. BOX. I would like very much to yield, but I have to decline because I want to finish my statement, and then I will try to yield to every gentleman.

There were outstanding, according to the record, at some time since then—I do not know that they were outstanding at that time, but there were outstanding more than $110,000 worth of bonds. My information is that the amount of these bonds was $300,000, but the record shows merely that the amount of them was more than $110,000. I read from the testimony of the auditor, Mr. Smethurst, on page 44 of the hearings:

> As a matter of fact, I do not think the creditors will get anything, because there is a bond issue outstanding, and the plant when offered for sale only brought an offered price of $110,000, which will not pay the bond issue outstanding, let alone any creditors or anything for Mr. Oliver himself.

Then it owes attorneys' fees and auditors' fees. I must take the time of the House to call attention to some of these.

> There is another item that we did not get in—the fees of Richard Smethurst & Co., $17,152.99. They have not been paid, and neither have these engineers' fees of $15,000.

That appears on page 45 of the hearings. On page 43 the statement is made that the firm of Lindsay, Young & Young has a claim of $10,000, $1,000 of which, one member of the firm said, had been paid.

That is enough to illustrate to you gentlemen the fact that you are dealing with a bankrupt corporation; whatever the cause of this bankruptcy may have been you are now dealing with the affairs of a bankrupt corporaiton, whose creditors are entitled to all its assets—first, under the mortgage, and next under their rights as creditors—before any stockholder is entitled to anything.

Mr. Oliver had elected to do business under the advantages which the incorporation of his business gave him, and he has not the right to come here now and say, "Though I did business as a corporation, though this was a corporation subject to all the laws and giving me as a stockholder of that corporation all the benefits of incorporation, I now ask that its affairs, its interests, and the rights of its bondholders and creditors be ignored, and that Congress strike out all compensation to the corporation and pay it to me personally."

Another thing that makes it sound ridiculous to me, with all respect to all the other members of my committee, is that Mr. Oliver himself was indebted to the corporation at that time to the extent of something like $60,000. He owed it. Its creditors shall recover nothing, but these claims due it, at least chiefly, shall be paid to him, its insolvent debtor. I do not know the exact amount, but he was indebted to it in a very large amount. I read from page 42 of the hearings and again from a statement made by Mr. Smethurst:

> Mr. Oliver was paid during 1918 the sum of $44,849 for salary at the rate of $50,000 per year as president and general manager of the company up to the date of his arrest, except for which it is evident his salary would have readily offset his liabilities to the company, which under the circumstances became a total loss, amounting to $61,032.86.

I read from the statement of Auditor Smethurst:

> He never received any interest on such payments and drew no dividends except one of 9 per cent paid in 1913. The balance finally due the company represents the difference between such advances and countercharges which accrued later in connection with work performed by the company for some of Mr. Oliver's various other interests. (Hearings, p. 43, top.)

Now, he owed it and the corporation lost his services, and because it did not collect the debt Congress is asked to pay him what he owed the corporation in this salary item.

I may not get to the salary item again, and there is another reason why the Treasury of the United States ought not to pay this item. I am anticipating, but I do not want to omit it. This salary is to be paid to Mr. Oliver for what he would have earned as its president thereafter. His wages would have gone on his indebtedness, and it is claimed that the man was injured within 4 or 34 days thereafter and rendered incapable of attending to his business. That because thereof the company failed to collect the $61,032.86 which he would have paid in services at the rate of $50,000 per year. That disability is the excuse they give in the hearing for not being bound by their settlement with the War Department; that he had no capacity to handle business and did not know anything about it, and that is true. It is pathetic. But how are you going to say that he is entitled to that $61,000, even if it had been coming to him instead of going to the corporation, on the theory that he would have earned it, except upon the theory that the Government is liable for the acts of an unknown party on the street or on the road in running over him and injuring him. Mr. Oliver was going to court, it is true, but certainly the Government is not liable because a man is injured going to court in a Federal proceeding. The theory that it is liable for the injury so suffered is the only basis for any claim of liability against the Government of the United States for the salary item.

There were some $8,000 worth of Liberty bonds and stamps in Mr. Oliver's possession at the time they seized his company's plant. I pause here long enough to say that in the manner in which this is presented, upon this ex parte showing, there were some very high-handed things done there. If this ex parte consideration of it is to bind us, nobody would stand ready to apologize for a lot of things that were done.

Somebody, after Mr. Oliver left his plant, got his bonds and stamps. Who? The trustee, his banker, suggested by him and the creditors, and we will say by those participating in the seizure, whoever they were, took charge the next day. A letter from the Department of Justice shows that soon thereafter—I

would like to have that letter, if the chairman of the committee will permit—we have got very little information from the Department of Justice. There has been an effort made to get it, but information is shy.

Mr. EDMONDS. They are ashamed of it. They do not want to give it to us.

Mr. BOX. They ought to give it. There are a lot of papers that should be now in the custody of the Department of Justice which would help us. I read from the letter of the Attorney General's department to the chairman of the committee:

Shortly after the hearings on the search warrant case before the United States commissioner on November 30, 1918, counsel for the defendants entered into a written stipulation that the records and the property which had been seized under the warrant might be retained by the Government and used before the grand jury in all criminal prosecutions.

I do not offer this for any purpose except to show you why I do not see any clear proof as to who got Mr. Oliver's and the corporation's $8,000 worth of bonds. It may have been a thief in his office; it may have been a thief connected with the group sent there by the Department of Justice. They may have been lost through the lapse of his memory, they may have gone in some other way, or they may have gone into the hands of this trustee.

Mr. TAYLOR of Tennessee. Will the gentleman yield?

Mr. BOX. I can not yield, and the gentleman will understand why. I will try to answer any questions later, but I do not know that I will have the time.

Mr. TAYLOR of Tennessee. This would be a very appropriate time.

Mr. BOX. But this record does not show that anybody connected with the Government got them. The record shows that numbers of people had opportunities to get them. It shows that people whom he placed in charge or helped to place in charge were in charge. If we allow this, we do it on the theory that every doubt must be resolved against the Government and every uncertain and unknown factor must by presumption be charged to the Government.

The bill consists of three items. The next is the item of $61,032.86 for salary, that I have mentioned and already discussed—the salary that Mr. Oliver was giving to the corporation in payment of his debt to it, and which it lost, and therefore the Government should pay Mr. Oliver.

The next item is $101,725, loss on shells claimed to have cost more, and shown in an ex parte manner to have cost more, because they were manufactured under the jurisdiction or administration of the trustee, his banker, appointed by creditors and by him and others. The record also shows that this was on a contract which, as has been stated here many times, was between him and the War Department, which contract and claims for damages arising from it were presented to the War Department on a claim for adjustment and a sum of some $66,000 paid and a full release from the company obtained.

I call your attention to a letter of Secretary of War Weeks in the majority report at page 5:

All shell manufactured to the total amount covered by contract were received and accepted by the United States, the full contract price paid therefor, and subsequently claim settlements were negotiated between the Oliver Manufacturing Co. and the Government for extras, increased facilities, etc., amounting to approximately $66,000 in addition to the contract price of the shell and including practically the full amount of every item claimed at the time.

* * * * * * *

Owing to the fact that full, complete, and final claim settlements had been negotiated and accomplished between the War Department and the Oliver Manufacturing Co., and the United States had received a final discharge from all claims and obligations of every nature arising out of the contract, it was considered that the War Department had no jurisdiction to entertain an additional claim arising out of the contract, and, of course, the War Department would have no jurisdiction to consider any claim for damages predicated upon the arrest or prosecution of Mr. Oliver.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. BOX. I will have to decline to yield.

The $101,725 ought not to be paid, first, because it ought not to be paid to Mr. Oliver in any event, and next, it ought not to be paid because the items that constitute it and the manner in which it was computed are not shown. The items of this settlement between Mr. Oliver and the Government are not shown. What items were charged and what were not, whether he got credit for this increase in cost or a part of it in his settlement with the War Department are not shown. All those facts are left in such a state of doubt and uncertainty that those of us who feel responsible for the manner and amount in which we adjudicate claims and appropriate the Government's money do not feel that the facts justify such an award. In the next place, it is shown that these claims arising out of this contract were presented to the Government for settlement just as we said they should go. Oh, there is confusion I grant you; there is fog and some uncertainty; but there is no doubt that the whole matter of this contract and claims under it went to the War Department for settlement and full relief obtained. How do we know what entered into that? Where do we get justification for saying that we should pay him another $101,725, notwithstanding the fact that the Government paid him $66,000 in that settlement above the contract price, we do not know for what, but now we will pay Mr. Oliver $101,725 more on account of that contract, notwithstanding the settlement it and he or the representatives of his concern made. There you are.

It is only fair to say that there is a contention throughout the record that Mr. Oliver should not be bound by this settlement. On page 46 of the hearings my colleague, Judge THOMAS, of Oklahoma, then apparently understanding this part of the case as I have it in mind, asked this question:

Just a question right there. The Government has settled, has it not, with the company for its liability in all of the contracts it had with Mr. Oliver or his company?

Mr. Smethurst answered:

Yes, sir.

Mr. THOMAS then asked:

And the claim you are presenting is a claim against the Government because of the illegal and wrongful act of the Government and its agents against Mr. Oliver as the owner and manager of his company, is that correct?

Then Mr. Smethurst said:

Not entirely—

He then mentioned some things to which I want to call your attention. At the bottom of page 46, the last paragraph under the title "Errors in law," it is said:

The contractor was not advised of his rights and settlement was entered into in accordance with a claim filed by the trustee who was appointed under the direction of the Ordnance Department.

Remember that Mr. Oliver and his creditors had at least a leading part in naming and constituting that trustee.

I have an idea that there are thousands of men holding war claims in the United States who can say that they "were not advised of their rights."

Uncle Joe Cannon, in discussing a bunch of war claims that came up here, dangerous and very threatening because of those to follow, said:

If you open up this class of demands you will have claims enough to patch hell a mile.

[Laughter.]

Now, gentlemen, if you open this settlement made through the War Department under the Dent Act, which fixed the time within which the claims should be presented, where are you going to end? How many more like this will come trooping in here saying, "You considered Mr. Oliver's claim and paid it, and Mr. Oliver was only a stockholder; now consider mine."

Another reason they give why the settlement should not bind, as claimed by Mr. Smethurst, "they were unable to present the facts at that time." (Hearings, p. 47.) There is another excuse why the settlement with the War Department should be reopened by special act of Congress. "Errors in findings of facts." (Hearings, p. 47.) That is another reason for opening up this settlement, because they committed some error in findings of facts. It is very easy for attorneys to insist that an error of fact was made in order to get a claim or case reopened. The auditor was laboring to overcome the force of the question asked by my colleague, Judge THOMAS. These are the results of that effort. Then Mr. Oliver's attorney speaks up and says:

I want to make plain to the Government that while these contracts were settled we do not think that Mr. Oliver was bound by them; but all of these items are additional and what we would have a right to have taken under consideration under the Dean Act. (Hearings, p. 47.)

That is what the attorney said about it. They should know more than the overworked Members of Congress, who get only three hours to delve into these old records. I am not alone when I tell you that I have read these old records until I have the headache.

The whole amount was made up of three items—$8,000 worth of bonds, $61,000 salary, and $101,000 in damages on a contract which I have discussed.

Now, gentlemen, there are other considerations in connection with this. If you should conclude that you are to unsettle the War Department settlement; if you should conclude that you ought to pay the $61,000 that Mr. Oliver owed the corporation and that he did not pay it because he got hurt; if you should conclude that the item of $8,000 is one that you could safely allow as damages, then I ask you to consider with me two or three other suggestions in connection with the claim. First, the items of damage I mentioned are the result of a series of calamities that befell Mr. Oliver. In the first place, beginning about a year and a half before this and while his plant was engaged in the manufacture of shells for the Italian Government, serious labor trouble arose. This is not a case of joint torts. You can not charge the United States with all this liability, including what somebody did a year and a half before anyone in the service of the Government had any connection with it.

You can not award him, as I take it, damages because of the personal injuries. I want you now to listen to an account of the labor troubles. Mr. Chairman, I ask that the Clerk read from the record the portion which I have had marked.

The CHAIRMAN. Without objection the Clerk will read.

There was no objection, and the Clerk read as follows:

STATEMENT OF MR. HAL H. CLEMENTS

Mr. CLEMENTS. At the time of and for a number of years prior to the seizure of the Oliver plant, I was the official attorney for the Central Labor Union of Knoxville, which is the parent labor body of all of the rest of the labor unions of the city, as you gentlemen probably have had occasion to find out in politics.

Some months prior to the seizure of the Oliver plant, there was a determined drive, not only in Knoxville, but all over the United States, on the part of organized labor, to organize each and every industry, and they were really taking advantage of war conditions to carry out their program.

Several months prior to the time when the Oliver plant was actually seized I was approached by an organizer for the machinists' union, by the name of Matt J. Robinson, whose home was at that time in Chattanooga, Tenn., or at least his headquarters were there.

Before Matt Robinson came to Knoxville there had been an organizer there by the name of Gilmore, who had made some effort to organize the Oliver plant and had failed. Gilmore later committed suicide in a hotel in another city.

Matt Robinson came to me and said that he wanted me to meet him and a number of the employees of the Oliver plant at my office for the purpose of taking certain affidavits from them in regard to the way the business was being conducted at the Oliver plant.

I met these gentlemen and prepared, in legal form, affidavits setting out the fact that they claimed that Mr. Oliver was manufacturing shells in violation of his contract; in other words, that he was making defective shells.

* * * * * * *

The federation held a banquet that night at the Atkin Hotel, and I remember that I was toastmaster on this occasion. I mention that fact because at that time I delivered to this representative of the Department of Labor, or, rather, Mr. Robinson delivered, in my presence, these affidavits, which were taken by him to Washington and turned over, so he stated, or were to be turned over to the Department of Labor.

Mr. W. T. Kennerly, who was at that time United States district attorney, and with whom I am on most intimate terms—I was before, and have been since, as a brother lawyer—has stated enough to me since that time for me to know and state that that was the real beginning of the trouble, which finally culminated in the seizure of the Oliver plant.

* * * * * * *

Mr. CLEMENTS. These affidavits set out the fact that there were additional lead disks being placed in the shells, as I recollect—it has been a good many years ago—and there were certain sand holes, or something, that they were welding up, in violation of the Government rules, etc., in some of the cast-iron shells.

I do not remember all of the various things stated in the affidavits, but from what I have learned since, I think that later the Department of Justice must have received these first affidavits; in other words, the Department of Labor must have referred them to the Department of Justice, and they sent certain secret service officers and other Government agents, who did not have anything to do with me, and whose presence I did not know of at the time, and have only learned since, and that they probably took additional affidavits, which were probably much stronger than the original affidavits taken by me.

* * * * * * *

Mr. HUMPHREY. Do you remember well enough to state whether or not the affidavits charged a crime against Mr. Oliver, if the statements were true?

Mr. CLEMENTS. Yes; they charged that he was secretly defrauding the Government, or words to that effect, by making defective shells.

I want the record to show that, as a result thereof, Mr. Oliver and I became estranged, and I am here now feeling that he has been done a great injustice. I am here without hope of any reward, as a volunteer, not paid counsel, but to try to right a wrong that I think has been done him, and of which I was an interested party as a lawyer.

Mr. SEARS. Do you think that any of those men came there for the purpose of carrying out a preconceived plan?

Mr. CLEMENTS. I do not know about that, Judge. Those organizers who came there were strangers to me, of course, and simply came to my office, because I was the official attorney of the Central Labor Union of Knoxville. Probably they made inquiry, and found out, and that is the reason they came to me.

* * * * * * *

Mr. CLEMENTS. Let me add this to my statement: I do know that Mr. Oliver discharged a man by the name of Leek and his son, and these men were very bitter in their attitude toward Mr. Oliver and probably helped work out a good deal of this evidence.

* * * * * * *

AFFIDAVIT OF T. A. WRIGHT

While the manufacture of high-explosive shells for the Ordnance Department of the United States Government was going on, and, in fact, while the Italian shells were being manufactured, the Oliver Manufacturing Co. was at many times greatly annoyed by labor troubles and disputes, not coming from within the factory but by agitators or people who apparently were moved by bad motives, interfering with the labor organization of the William J. Oliver Manufacturing Co. The plant was kept, however, fairly free of troubles of this kind during the year 1917, until some time near the middle of the summer of that year, when strenuous efforts were made, as was believed at the time, to seriously handicap the plant in its operations by agitators from the outside, and Mr. Oliver, the head of the Oliver Manufacturing Co., in resisting this apparently incurred very serious enmity of a number of these agitators and leaders in the movement to handicap and interfere with operations of the plant, as then understood.

All of this culminated in the early part of October, 1918, when, without warning and when the plant was operating to a high degree of efficiency, warrants were sworn out through the Department of Justice, and a number of deputy marshals, together with a platoon of soldiers, went to the place of the William J. Oliver Manufacturing Co., closed the plant against any of the employees leaving it for a considerable time and anyone from the outside entering the plant, and arrested Mr. Oliver and nine of his principal foremen on a charge of sabotage and fraud, as stated in these warrants. After some little time I went to the plant as attorney for the company and found this condition of affairs existing, and found the deputy marshal engaged in seizing and taking into their control and away from the plant all the records and files of the same, correspondence, books, etc., and also taking into their possession and control some 400 or more of the practice cast-iron shells, all of which were removed to the custom-house here in Knoxville.

Mr. BOX. Mr. Chairman, this is a grievous state of affairs. I refer to the occurrences shown by what the Clerk has just read and to others which I have mentioned, consisting of personal quarrels, strife, assault or alleged assault against labor men, suit for damages for personal injuries brought against Mr. Oliver because thereof; indeed, a protracted series of labor troubles extending over a year and a half. The corporation had not paid a dividend since 1913, which was the only one it ever paid. It was heavily in debt. It had "largest" creditors, who insisted on its executing a deed of trust naming Mr. McCoy, who was connected with its local bank, as trustee and placing the plant and business in his charge on the day of or the day following the seizure. The trusteeship caused much of the loss. The receivership following later caused more of it.

Another element that entered into it is the personal injury, to which I have referred. We can not award judgment or make an appropriation to satisfy a demand for personal injuries on that account. I have heretofore insisted that the Government of the United States ought not to be held liable for any criminal prosecution. We have not had all of the facts from the Department of Justice. There has been a call for them, and the response has been regrettably brief—very unsatisfactory. They have not been satisfactory to me. They give you no information. If an outrage has been committed by that department, the facts should not be concealed. Certainly they should not be withheld in aid of an effort to get money out of the

Government on an unjustified demand. So that we have the personal injury and the labor trouble and the prosecution. There is no joint tort there. It is true that they all entered into a general result, but so do all disconnected misfortunes. There has not been any joint tort here which would make the United States liable for all damages Mr. Oliver or his corporation claims to have suffered. If you conclude that you ought to hold the United States liable on this ex parte presentation, you will have great difficulty in ascertaining, even approximately, how much of the damages resulted from any one of the several causes.

There was labor trouble for a year and a half, with strikes, discharges, personal assault, a damage suit for personal injuries, several affidavits against Mr. Oliver charging the fraudulent manufacturing of defective shells; finally came the arrest, followed immediately, or on the next day, by the execution of a deed of trust for the benefit of creditors. Then came the personal injuries. Later came a receivership. If my colleagues on the committee are thoroughly familiar with the facts, as I would expect them to be, they would tell you that those $300,000 worth of bonds were placed after this seizure. Creditors after the seizure evidently did not think him ruined, if they extended new credit. If the bonds merely funded old indebtedness, then it had heavy old indebtedness. Whether the bonds were placed then or at some other time, all of the assets of the corporation belong to these creditors now. I know I am correct about that; the House can express its own views when it votes.

These facts are very voluminous. I have not been able to present them all as I would like to have presented them. I have the right to extend, and I shall add some matters that I have omitted, but this is substantially all of the case which I can present now. Neither my information nor the statements which I and my colleagues of the committee can make to the House is sufficient to enable its membership to pass intelligently on the claim; but I have given you the best statement the limitations of circumstances will permit.

Mr. BOWLING. Mr. Chairman, will the gentleman yield?

Mr. BOX. Yes.

Mr. BOWLING. I would like to ask the gentleman perhaps a half dozen questions for my own information.

Mr. BOX. The gentleman will be very lucky if he is able to answer one of them.

Mr. BOWLING. At the time of this seizure was this a going concern?

Mr. BOX. It was, according to what I gather from the record.

Mr. BOWLING. Was this strike the proximate cause of Mr. Oliver's arrest?

Mr. BOX. I think the strike was not. I believe that the grievance, the trouble with labor, the trouble with the labor agitators caused the complaint and the prosecution and ultimately resulted in the arrest.

Mr. BOWLING. If I understand the reading by the Clerk, he was arrested at the instance of these labor agitators. If I am correct in that assumption, was Mr. Oliver responsible for his own arrest in any way?

Mr. BOX. The labor agitators, according to the affidavit, made complaints, and the witness Clements, then the attorney for the union, expressed the opinion, in which the gentleman from Texas shares, that that was the beginning of this trouble. I think there were other affidavits. I think there was an investigation by the United States Secret Service at the time, and that all of it together culminated finally in this arrest.

Mr. BOWLING. He was indicted and charged with some offense which was finally dismissed upon hearing in the courts?

Mr. BOX. Yes; but not all unsuccessful criminal prosecutions are from bad motives or even without probable cause.

Mr. BOWLING. Were all of those charges upon which he was finally dismissed included in the charge that he was making defective ammunition down there?

Mr. BOX. I do not know of any other charge except that and the things incident to it.

Mr. BOWLING. The gentleman stated in his remarks that this concern went into bankruptcy.

Mr. BOX. If I stated it in that way, let me make a correction. The concern, at the instance probably of the Government, and certainly of the creditors, executed a deed of trust and turned the plant over to Mr. McCoy, the local banker, who became the trustee.

Mr. BOWLING. About how long after this seizure was it until this concern became bankrupt?

Mr. BOX. If the gentleman may express his personal conviction, based on all his investigation, he thinks that it was at that time seriously involved. The record indicates that there was later a receivership. At first this trustee and the administration by him, and later a receiver and a great volume of attorney fees and receiver fees and many things like that. The gentleman, as a practicing lawyer, knows how those things accumulate about an insolvent corporation.

Mr. BOWLING. I have just one other question, and I thank the gentleman very much for his indulgence. Does the record show these Liberty bonds in question were seized at the time the place was raided?

Mr. BOX. To be exactly accurate, the gentleman from Texas is not clear on that. He knows Mr. Oliver testified he had the bonds there in the office at that time and has never seen them since. If he is in error about the substance of the testimony, he would be glad to have any Member correct his statement.

The CHAIRMAN. The time of the gentleman has expired.

Mr. EDMONDS. Mr. Chairman, can we get some understanding with regard to the time on this bill?

Mr. BLANTON. Well, I want considerable time on it, because I have given close study to this case.

Mr. EDMONDS. How much time does the gentleman desire—15 minutes?

Mr. BLANTON. We helped the gentleman to get to-day with the understanding there should be liberal debate.

Mr. EDMONDS. I want to be liberal.

Mr. BLANTON. Let us proceed along under the rules of the House; the rules of the House are all right.

Mr. WINGO. May I inquire of the gentleman when he expects to get a vote; this week or next week?

Mr. EDMONDS. It looks like next week.

Mr. McREYNOLDS. Mr. Chairman and gentlemen of the committee, I have listened for some time very attentively to the argument of the distinguished gentleman from Texas. I am sure that he did not wish to be unfair, but many of the deductions which the gentleman makes from this testimony I feel are unwarranted; and, permit me to say, he is one of the most conscientious members of our committee, in whom we all have great confidence and for whom we have great respect; but he is so conscientious about many of these claims and he is so much interested with the fear that the Government will not be properly treated that he has often grown suspicious of their consideration. I was very much surprised to hear his complaint on yesterday when he was almost calling in question the revival of the old rule of this House giving Friday for the consideration of claims. I remember that several members of the committee, the gentleman from Tennessee being one of them, requested at the last term that we be given a hearing of these claims other than by unanimous consent that have been reported out of committee. When a claim is reported out of the committee I feel like that claimant is entitled to the consideration of that claim before this House upon its merits, and I am very glad indeed that they have given us opportunity to consider these claims. I feel that the House gave due consideration to the claims on yesterday, although I did not agree with them on some; but these matters are to be decided by the House, and there is no imputation of wrongdoing whenever the House decides as they see proper. This case before you is very important. It is a very important claim, and, according to my ideas after due and proper consideration of it, it is but a small amount of what should really be allowed. The distinguished gentleman a few minutes ago made the statement that when this company was taken over by the Government—or leaving that impression—that it was heavily involved.

I can not see the testimony in this record from which he can draw such conclusion. For the first part of the argument he cited you to the record in reference to these bonds, and later, about 20 minutes later, after that had time to soak in, he stated that perhaps those bonds were placed in this company that had gone into the hands of a receiver.

Mr. BOX. Will the gentleman yield?

Mr. McREYNOLDS. Certainly——

Mr. BOX. I read——

Mr. McREYNOLDS. Do not read.

Mr. BOX. I want to say the record shows evidently Mr. Oliver was heavily indebted to the plant himself at that time.

Mr. McREYNOLDS. I will come to that.

Mr. BOX. Can I ask one question more?

Mr. McREYNOLDS. Perhaps I should show the gentleman the same courtesy and say, wait until I get through.

Mr. BOX. I shall do so.

Mr. McREYNOLDS. I claim that the record in this case does not show that this concern was heavily involved at the time this property was taken over, but the record does show that it was a going concern, and that he was discounting his bills at the time this property was taken. Another peculiar

argument—that the labor organizations were responsible for Mr. Oliver's arrest and therefore the damages incurred were so connected between the Government and the labor organization that there is no chance for this body to do justice in this case. If there was trouble with the labor organizations, and there was, and they had been fired by Mr. Oliver, then those people who signed this affidavit, the Government officials, was it not more incumbent upon them to be a little more careful about the consideration of the class of evidence upon which they were put out and these warrants which practically and absolutely ruined this man?

It was in war time. There was labor trouble. This record shows that in the room of the officials of the Government at a hotel, Mr. Snyder being present, these men who had been discharged by Mr. Oliver were brought together and there these affidavits were made, and that it was upon these affidavits later that the Government issued the warrant that caused this arrest.

Now, was there probable cause at the time for the arrest of Mr. Oliver? Was that arrest based upon sufficient facts warranting a reasonably prudent man to issue this warrant and take charge of that plant? What is the answer? Justice McCall, from Memphis, came there and tried this case, an indictment with 26 counts presented by the Attorney General, and after a week's presentation the judge from the bench dismissed 23 of these counts and the Attorney General nol-prossed the other three.

Does that show that there was a probable cause for taking charge of the plant?

In this record is this:

A few days later these discharged employees met with Captain Avery, chief of ordnance, stationed at the Oliver plant, and Trazarre, who was at the head of the Military Intelligence Bureau, stationed at Atlanta, and a man by the name of J. S. Snyder, who was connected with the Government service in some way, at the rooms of Captain Avery at the St. James Hotel in Knoxville, where the discharged employees made statements that they had been discharged for joining the union, and also referred to certain irregularities carried on by Oliver and his superintendents at the plant.

That is from the record, pages 16 and 17.

I say that these officials of the Government, knowing the conditions that existed with reference to the labor trouble, ought to have been more careful about acting upon affidavits made by those people.

The facts are these, that they came there and took charge of Mr. Oliver's plant without any knowledge on his part that that would be done. With no notice they surrounded the plant, and rushed in while Mr. Oliver was sitting at his desk and arrested him, and not only him, but also nine of his superintendents or foremen in that plant.

The question is raised as to whether or not those $8,000 of stamps and Government bonds were taken. The proof shows that they were there in Mr. Oliver's desk, and that these men, in charge of these officials, came in and took charge and emptied the desk of everything and took this property. That is what happened, gentlemen.

Now to give you, gentlemen, a very clear and concise statement of just what occurred at this arrest and the putting in of Mr. McCoy as trustee, I want to read to you that portion of the testimony of Hon. T. A. Wright which the gentleman from Texas did not have read, showing what occurred when Mr. McCoy was appointed trustee.

Mr. HUDSPETH. Mr. Chairman, will the gentleman yield?

Mr. McREYNOLDS. Yes.

Mr. HUDSPETH. Who was Mr. T. A. Wright?

Mr. McREYNOLDS. Hon. T. A. Wright at that time was one of the most prominent men in east Tennessee. He has since died. He was an attorney. I knew him personally. Almost every man in his portion of Tennessee knew him.

Mr. BULWINKLE. That is on page 64 of the hearings.

Mr. McREYNOLDS. Yes; pages 64 and 65. Here is the part of the testimony of Mr. Wright that I referred to. He first describes the situation in that portion of the testimony that was read, and then he continues his statement of what was occurring. He says:

My recollection is that that was October 4, 1918. After the bond was made, or about the time they were completed, I learned that the control of the plant, and, in fact, the entire operation there, had been taken charge of by the district ordnance department of Cincinnati. There were present Mr. G. S. Haydock, of the ordnance department, Cincinnati; also, Mr. Lampson, as I recall, and, I think, Major McClellan, and some four or five others—Army officers—who had apparently taken part in the seizure of the plant. I understood from Mr. Haydock, who was, according to my understanding at the time, the assistant to Mr. Harrison, of the district ordnance department at Cincinnati, that the plant had been commandeered and would be taken over and operated, so far as the shell manufacturing department of it was concerned, for the use and benefit of the Ordnance Department of the Government.

I was in conference with Mr. Haydock and his associates, including these Army officers, most all of the remainder of the day of October 4—if that was the correct date, and I think it was—and which conference was renewed on the morning of October 5. I pointed out to the ordnance and Government officials that the William J. Oliver Manufacturing Co. was not only engaged in manufacturing or machining high-explosive shells, but that there was a very large foundry also being operated by the company, and also a very large machine shop, wherein many castings and other foundry products were being made for public utilities and various industries, the running of which was quite essential to the successful prosecution of the war, and that especially in the machine shop or car part of the plant of the William J. Oliver Manufacturing Co. the company was making a very large number of cars, and especially mining cars, which it was delivering to the coal operators of east Tennessee and Kentucky, and that if the plant was commandeered by the Government, and it used it only for the purpose of machining the shells for the United States Government, that they would close down a half or more of the entire operations of the plant, which would be extremely injurious and detrimental to the coal operators of the country, and would tend to prevent or greatly decrease the coal production of the sections referred to, and perhaps other sections, and would prove very detrimental to the United States Government.

The fact of it, gentlemen, is that only about one-third or one-half of this foundry was taken up with the manufacture of shells; but when the Government took charge they proposed to run only the shell department, and they did run the shell department.

Mr. Wright says in this statement that he insisted that it would be of great damage to this company if they were not allowed to run the commercial side of it. He continues:

I was advised by the representative of the Ordnance Department who then had charge of the plant that they would not expect to operate any part of it except that part which was engaged in the machining of shells and preparing them for use, and we then negotiated for some considerable time to see if we could not allow the William J. Oliver Manufacturing Co. to continue to use its foundry and machine shops and all that part of it not engaged in the manufacture and preparation of these shells for the Ordnance Department and to continue its operation of these departments. Many objections were found to this on the part of the Government representatives, and, among other things, they declined and refused to allow Mr. William J. Oliver or any of the other nine defendants, who were, as stated, the principal foremen, to go into or about the plant, and after negotiating practically all day it was finally agreed by Mr. Haydock and his associates that if some person who would be satisfactory to them could be secured to act as trustee that they would agree for the William J. Oliver Manufacturing Co. to transfer or turn over to such trustee the entire plant of the company and all of its operations, and through this trustee they would permit the operations of the shell department to be continued, provided they were allowed to designate and name a man to have charge of these operations under this trustee, and that they would permit this trustee to continue to operate the other departments of the William J. Oliver Manufacturing Co. plant.

Mr. F. L. Fisher, of the East Tennessee National Bank, was present part of the time and participated in some of the conferences held, and after finding that this was the best and perhaps the only thing that could be done to prevent the entire plant being commandeered and used only for the operation of the shell department under the Ordnance Department, we advised the directors of the William J. Oliver Manufacturing Co. that it was the only thing that could be done to prevent not only the entire destruction, as it seemed to us, of the William J. Oliver Manufacturing Co., but to also prevent very serious loss to the Federal Government in having this very large, well-equipped, and successfully operated plant from being shut down upon all character of work that it was doing, except the manufacture of shells, which I do not think occupied much over one-third, if any more, of the entire plant.

The directors, you will notice—not the creditors, but the directors—were advised. And permit me to say right there that the proof in this case shows that Mr. Oliver owned practically all of that stock, all except, as the gentleman from Texas says, about $500 of the stock. Under the laws of Tennessee for a man to be a director in a corporation of this character he must have some stock, and of course Mr. Oliver, it is to be presumed, had placed that stock in their hands although it was his, for the purpose of complying with the law and having them serve as directors.

Mr. COLLINS. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. COLLINS. He does not own that stock now, does he?
Mr. McREYNOLDS. Who does not own it?
Mr. COLLINS. I say he does not.
Mr. McREYNOLDS. I understand there is no stock.
Mr. COLLINS. I understand; but it is in the hands of a receiver, and if any money is due anybody it is due to the corporation, is it not?
Mr. McREYNOLDS. The fatal blow which was given was to W. J. Oliver, the owner of that concern. He is the man they crept up on at this time and took charge of his property and ruined his credit and ruined his name, of course, under those conditions.
Mr. LaGUARDIA. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. LaGUARDIA. Does the corporation owe any money now?
Mr. McREYNOLDS. From this statement, I presume it does. I understand that after it went into the hands of the trustee—it first went into the hands of a trustee and then into the hands of a receiver later—that these bonds and this indebtedness were incurred afterwards. But they were dealing with the trustee at the time, and it afterwards went into the hands of a receiver.
Mr. LaGUARDIA. The corporation has not been liquidated, has it?
Mr. McREYNOLDS. I do not know whether it has or not.
Mr. TAYLOR of Tennessee. Yes; it has.
Mr. SCHAFER. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. SCHAFER. I note the report says that—

On the 4th day of October, 1918, the Oliver Manufacturing Co.'s plant, situated at Knoxville, Tenn., was of the physical value of approximately $1,500,000.

Where were those figures obtained?
Mr. McREYNOLDS. I shall have to ask the gentleman from Oklahoma [Mr. THOMAS], who made the report, to answer the gentleman.
Mr. EDMONDS. That was testified to in the hearings.
Mr. McREYONLDS. I think the auditor employed gave those figures in his testimony, but I am not sure.
Mr. SCHAFER. Was it testified in the hearings as to what value was placed upon the plant, what physical value, for the purpose of an assessment for taxes?
Mr. McREYONLDS. I do not know whether it was put in in that way, but there are figures in here showing that there was a valuation placed upon it of $1,400,000. How they reached that figure I do not know. Now, further, Mr. Wright says in this affidavit that after much effort on his part he succeeded in getting the directors to agree to the proposition of making Mr. McCoy the trustee. So it went into the hands of a trustee because there was nothing else they could do. The Government proposed to operate only a part of that plant, which, as I stated, was only one-third or one-half, and naturally they wanted to get full operation, if possible, but with the understanding that W. J. Oliver and none of these other men should go around that plant taking away the men who had carried out these contracts and who had made it a going concern. Some one asked whether it was a going concern. It was a going concern at the time it was taken over, and the proof shows it was not only a going concern but that Mr. Oliver was discounting his bills at that time.
Mr. BURTNESS. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. BURTNESS. In any of the documents presented to the committee was any balance sheet included showing the condition of the business immediately before the arrest, or shortly before the arrest, so we could get at the net worth of the concern?
Mr. McREYNOLDS. I will state to the gentleman that there is nothing of that kind in the report.
Mr. BURTNESS. I know there is nothing in the printed hearings bearing on that, but I noticed there were a lot of documents filed but not printed, and I wondered whether those documents contained any such information.
Mr. McREYNOLDS. There might be such information in some of the documents.
Mr. BURTNESS. Does the gentleman know how much the concern owed at the time the arrest was made?
Mr. McREYNOLDS. I do not.
Mr. BURTNESS. We have been advised as to the physical valuation of the plant; and if we had an inventory of the personal property on hand and knew approximately what the plant owed, we would be able to judge what Mr. Oliver's interest in the plant was.
Mr. McREYNOLDS. I could only judge from this statement, and I presume, naturally, being a big operator, he had perhaps a line of credit with the banks in order to carry on his business, and it appears from the proof he was discounting his bills and had already collected from the Italian Government $1,000,000 for shells he had made for that Government.
Mr. LaGUARDIA. If it were a going concern at the time of the arrest, was there any effort made to ascertain its going value?
Mr. McREYNOLDS. At that time?
Mr. LaGUARDIA. Yes.
Mr. McREYNOLDS. I believe there is an estimate of $1,400,000.
Mr. LaGUARDIA. Of going value?
Mr. McREYNOLDS. I do not know, but I do not think that much.
Mr. BURTNESS. That was the physical valuation of the plant.
Mr. McREYNOLDS. Now, attention has been called to the letter written by the Secretary of War. The letter of the Secretary of War is not inconsistent, if you take it as a whole. In the first part of the statement which was read by the gentleman from Texas it was said that these matters have been settled. Those were the matters that were ex contracto matters. But I am unable to place the same construction on the sentence which the other gentleman from Texas read; that is, the sentence read from the letter written by the Secretary of War. Now, the first part of Mr. Weeks's letter deals with those matters which the committee has not allowed, and the auditor in his statement says that there was no item passed on by the Secretary of War which is claimed in this claim. But the committee did not allow those matters which should have been settled by the Secretary of War. This sentence was read by the gentleman from Texas [Mr. BLANTON]:

It is possible that the arrest and prosecution of Mr. Oliver was characterized by incidents that gave rise to justifiable criticism and that financial loss may have resulted therefrom.

What was subject to justifiable criticism? Not, as I construe it, that Mr. Oliver was subject to justifiable criticism, but that the Government in making the arrest was subject to justifiable criticism and that financial loss may have resulted therefrom. So you see the letter written by Secretary of War Weeks is not inconsistent, and it is not inconsistent with the allowance of this claim, because he does not express himself on those matters over which he did not have jurisdiction.
Mr. WATKINS. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. WATKINS. Does the gentleman know the amount paid by the Government on claims ex contracto in the settlement by the War Department with the Oliver people?
Mr. McREYNOLDS. I only know what this report shows; that according to those statements they paid $66,000 more than the contract price. Those are the matters arising out of the contract.
Mr. WATKINS. This claim, stripped of everything and brought down to its last analysis, really means giving money to Mr. Oliver in the way of damages for malicious prosecution. Is not that just about what it means?
Mr. McREYNOLDS. No, sir; it does not. Here are the facts and here is what we insist upon:
The Government has wrongfully and without right, and even without probable right, taken charge of this plant, forced a trustee, conducted the making of shells under Mr. Snyder, placed there by the Ordnance Department, and in doing that and taking out the organization which Mr. Oliver had, men who were trained, it cost them $3.25 more to make these shells than it did Mr. Oliver, and the Government settled at that price.
Mr. WATKINS. Will the gentleman yield?
Mr. McREYNOLDS. Yes.
Mr. WATKINS. I understand from the letter of the Secretary of War that the War Department never did take possession of that plant and that it was retained in the possession of Mr. Oliver's people throughout.
Mr. McREYNOLDS. I have tried to make that plain. The Secretary of War could say that it was run by Mr. Oliver; that is, by the trustee, because the trustee was in charge; but by whom was the trustee named, and what caused him to be named, and under what conditions? Here are the statements.
Mr. WATKINS. The trustee was appointed by the company.

Mr. McREYNOLDS. Appointed by the company, of course; but at the suggestion of these men who had charge of the plant, to wit, the Government officers, and with the understanding that Mr. Snyder, a representative of the Government, would be in charge; and there is in this record a letter from Mr. Snyder, written to the ordnance department in Cincinnati on November 10, in which he signs himself "W. J. Oliver & Co., superintendent of the shell department." That shows you who was in charge.

Mr. COLLINS. Will the gentleman yield?

Mr. McREYNOLDS. Yes.

Mr. COLLINS. Will the gentleman vote for an amendment to this bill submitting this claim to the Court of Claims for adjudication?

Mr. McREYNOLDS. I will not. I will vote for a bill to bring other matters of this kind to the Court of Claims, but here is damage that has been done this man on account of the extra cost of these shells and on account of the $8,000 which they took, not to speak of the estimated damage of $150,000 which they did to his commercial plant, because it is said by one of these witnesses that it lost $30,000 a month after they took charge.

Mr. RAMSEYER. Who took the $8,000 of bonds, and were they registered or coupon bonds?

Mr. McREYNOLDS. That is not shown, but there is proof in the record that many of Mr. Oliver's employees had bought bonds and had failed to pay for them, and when they failed to pay for them he took them up. I presume, under those conditions, they were not registered. They were in his desk. What was in his desk was taken out upon the orders and by command of the men of the Army.

Mr. RAMSEYER. Then it is to be presumed that some of these deputy marshals who took the papers as agents of the Government stole them. Suppose the sheriff in your county should do the same thing, would the remedy of the person that is injured be against the county treasurer, to be reimbursed from public funds, or would his remedy be against the sheriff and his bondsmen for the value of the property which he took?

Mr. McREYNOLDS. That is not a similar question at all.

Mr. RAMSEYER. It is absolutely identical. If it was a deputy marshal, he is under bond and is responsible for the property he takes and is liable for any that he misappropriates.

Mr. McREYNOLDS. I just yielded for a question.

Mr. RAMSEYER. I would like to ask another question.

Mr. McREYNOLDS. Since the gentleman is going to make a speech, I do not believe I will yield to him.

Mr. RAMSEYER. I would like to ask the gentleman just one other question. Does not the letter of the Secretary of War go to the element of damage, which you claim amounts to $101,000, when he says, on page 5 of the report, that they paid him everything he claimed on the contracts and in addition to that paid him $66,000, which included practically the full amount of every item claimed at the time?

Mr. McREYNOLDS. Absolutely not, because this question arose afterwards.

Mr. RAMSEYER. Oh, no.

Mr. McREYNOLDS. That was on the contract, and this is for damages.

Mr. RAMSEYER. The $66,000 was outside of the contracts.

Mr. McREYNOLDS. I think the Secretary of War makes that plain, if you will read the entire letter, wherein he says, toward the last of the letter, that these other claims he has not considered.

Mr. RAMSEYER. That is the claim for $8,000 of Liberty bonds.

Mr. McREYNOLDS. The letter refers to these three claims.

Mr. RAMSEYER. That is the claim for $8,000 of Liberty bonds and for salary. Of course, there are not any legal grounds for allowing anything there.

Mr. SCHAFER. Will the gentleman yield for a question about the bonds? What other testimony besides the testimony of Mr. Oliver is there to show there were $8,000 worth of bonds?

Mr. McREYNOLDS. There is the testimony here of Mr. Jennings, I believe, who testified about that. He was the superintendent.

Mr. SCHAFER. And he knew that of his own personal knowledge?

Mr. McREYNOLDS. I do not know. I just know what his statement was.

Mr. SCHAFER. In view of the statements of the proponents of this bill as to the mental and physical condition of Mr. Oliver, does the gentleman think the committee could place a great deal of weight on his testimony unless it is pretty well corroborated?

Mr. McREYNOLDS. On Mr. Oliver's testimony?

Mr. SCHAFER. Yes.

Mr. McREYNOLDS. I would think so from the report of the subcommittee. Having seen him and knowing him and having heard him testify, I think they could place confidence in what he has said.

Gentlemen, I am not going to take up more of your time, but I do feel that these items should be paid by the Government. I think this was one of the most outrageous procedures or occurrences that ever took place in this country. When they can seize a man's plant, destroy him and destroy his property, which has meant the destruction of his mind and body, in a free American country, I say that this country is a country of conscience, and while he has no right to go to the courts, they will not permit their citizens to be treated in this way without compensation.

Mr. BURTNESS. Will the gentleman yield for a couple of questions on matters that have not been covered?

Mr. McREYNOLDS. Yes.

Mr. BURTNESS. This plant, as I understand it, has been sold in some way or other since these occurrences?

Mr. McREYNOLDS. It went into the hands of a trustee and I presume it has been sold. The gentleman from Tennessee [Mr. TAYLOR], who lives in this district, would know about that, and I will yield to Mr. TAYLOR to answer you.

Mr. BURTNESS. Does the gentleman know what it was sold for?

Mr. TAYLOR of Tennessee. One hundred and ten thousand dollars, and was bought in by the bondholders.

Mr. BURTNESS. Do you know how much the general creditors of the corporation have received on their claims?

Mr. McREYNOLDS. I have no knowledge of that whatever.

Mr. BURTNESS. Is it the contention that the creditors have been taken care of or not?

Mr. McREYNOLDS. I think not from this proof.

Mr. BURTNESS. If the creditors have not been taken care of, on what theory did the committee amend the bill so that the sum regarded as fair is to be paid to Mr. Oliver personally instead of to the creditors of the corporation?

Mr. McREYNOLDS. I understand that this indebtedness, which caused the company to go into the hands of a receiver, occurred after it went into the hands of the trustee, and this blow was a direct blow at Mr. Oliver when he had it as a going concern, when he was making money, and when he was able to pay everything and more that he owed.

Mr. BURTNESS. Would it not be a direct blow at the creditors of the corporation?

Mr. McREYNOLDS. It would if they had it at that time, but they dealt with the trustee.

Mr. BOX. Will the gentleman yield?

Mr. McREYNOLDS. I will.

Mr. BOX. I want to call the gentleman's attention to the statement of Mr. Humphrey on page 2 of the hearings:

> And upon the urgent solicitation of the largest creditors of said manufacturing company said company made a deed of trust—

And so forth.

Mr. McREYNOLDS. I am thoroughly familiar with Mr. Humphrey's statement. That statement of Mr. Humphrey was made to the committee. What I read was from the testimony of Asbury Wright, the lawyer.

Mr. BOX. And the gentleman says that Mr. Humphrey's statement is not correct?

Mr. McREYNOLDS. Not as I understand it.

Mr. BLANTON. Mr. Chairman, for the information of the committee, I ask the Clerk to read an amendment which I propose to offer.

The Clerk read as follows:

> Proposed amendment by Mr. BLANTON: Page 1, line 3, strike out all after the enacting clause and insert in lieu thereof the following:
>
> "That the Court of Claims be, and it is hereby, authorized to hear and determine the claim against the United States of William J. Oliver, for himself individually and for the equities inuring to him as the former president and principal owner of the stock of the corporation, the William J. Oliver Manufacturing Co., of Knoxville, Tenn., and of such corporation itself, now dissolved, and to award to him such damages, if any, as he may have actually incurred, based solely upon actual loss sustained, if any, without interest, resulting directly and proximately from the seizure of the business of said corporation in October, 1918, and the restraint thereafter held by the Government upon such property, which exceeds, if it does do so, payments heretofore made by the Government. But no remuneration shall be allowed for wrongful arrest, if any, of the person of said William J. Oliver. All questions of law, equity, and fact are hereby expressly submitted to said Court of Claims for adjudication."

Mr. BEGG. Mr. Chairman, I reserve a point of order against that.

Mr. BLANTON. It has not yet been offered. Mr. Chairman and gentlemen, this is one of the most remarkable cases that has ever been brought before this Congress. If the facts presented to this committee in the record are true, it is an indictment against two big governments. First, it is an indictment against the Government of the United States, and second, it is an indictment against every labor union in it and its officers. If labor union organizers and a few disgruntled employees in a plant where 1,100 other satisfied nonunion men are working to produce war munitions for American soldiers to defend the civilization of the world, without any justification whatever therefor, can make the Government of the United States forcibly take charge of a man's plant, turn him out, turn all of his foremen out, take charge of all of his personal property, and ruin him, then I say it is an awful indictment against the Government.

Mr. UNDERHILL. Was not that done in Massachusetts in the case of Smith & Wesson and in Georgia in Columbus, and many other cases?

Mr. BLANTON. That is just exactly what made me stand here on this floor during the war and protest against such union tactics and thereby incur the enmity of a great man that has just passed beyond to-day. It was because of that fact that I incurred the enmity of a great man, Samuel Gompers, and he was a great man, because for 46 years he led the organized labor unions of this country and in many respects led them ably. I differed with him on many questions, but after all I had a very high regard indeed for his many good qualities. There are no differences now between myself and this great man who to-day has gone beyond. I freely forgive all injuries.

Mr. SCHAFER. Will the gentleman yield?

Mr. BLANTON. I did want to complete my discussion of the bill without further diversion.

Mr. SCHAFER. The gentleman made a statement in which I think he has strayed from the real facts when he prefers an indictment against labor unions. Does not the gentleman realize that these men who made the affidavits which were turned over to the Department of Justice were nonunion employees of the Oliver Manufacturing Co.?

Mr. BLANTON. Oh, the gentleman from Wisconsin has not read the record. Mr. Clements, of Knoxville, Tenn., who admits that he used these affidavits to bring on all this trouble, was a leader of all the labor unions in the State of Tennessee. He was a union leader and he said he took these affidavits——

Mr. SCHAFER. Will the gentleman yield further?

Mr. BLANTON. In just a moment. He said he knew at the time he took them that it was calculated to force the unionization of this plant against the will of the man who owned it, and that they had been trying to unionize it but could not do it, and it never was unionized.

The gentleman from Massachusetts [Mr. UNDERHILL] speaks of the Smith & Wesson plant. That plant was manufacturing munitions of war for the Government. It was furnishing the Smith & Wesson revolvers for a little over $17 apiece and worked upon the open-shop plan. The men were satisfied, they were being paid higher wages than they ever drew before in their lives. The labor agitators were trying to force Smith & Wesson to unionize the plant, and they would not do it. There was such a pressure brought to bear upon the United States Department of Labor at Washington that through it the Government went to Smith & Wesson and said, "You have got to unionize. We are not going to have any trouble here." Smith & Wesson said, "Here is our plant, you can take it, you can take us, you can take everything we have, but you can not take our principle, we do not believe in a closed shop." The Government then took their plant away from them and unionized it. Instead of the Government afterwards getting the revolvers at $17 apiece they had to pay $33 apiece for them. Oh, I could tell the gentleman lots of things if I had time.

Mr. SCHAFER. Will the gentleman yield now?

Mr. BLANTON. In one minute. I want the gentleman to take the evidence of this great labor leader at Knoxville, Tenn., Mr. Clements. I want him to read it, and if that is not an indictment against labor-union agitators I never read one stronger. But I am not discussing unions just now.

I am discussing the equities of this case, Mr. Chairman. What are the equities of the case? If the Government took this plant wrongfully and if it caused the ruin of this man financially, the ruin of his health, breaking him down, it ought to pay him, and I am not going to stand here in the way of a proper adjudication. Talk about us adjudicating this case! It is foolishness. What do we know about the facts? Every time a man gets up here to speak for the claimant and we ask him some questions he replies that he does not know. No one here knows all of the facts. Who of you knows the facts in this case? Nobody. We ought to send this case to the Court of Claims and confer jurisdiction, and let them hear and determine it properly. Let Mr. Oliver present his testimony to a fair-minded court. Let him present his equities and let the Government present its side of the matter and let that court of fair-minded judges, as they are, pass on the equities of the case and render a righteous judgment. Who is afraid of that? I am not.

Mr. WATKINS. If that agreement were not entered into under duress, would not the fact that the Government and Mr. Oliver, or its representatives, had entered into an agreement extinguish all matters of dispute and prevent him from going before the Court of Claims?

Mr. BLANTON. I think there are some equities in this case that ought to be heard before a court. Just because these labor leaders attempted to force this plant to be unionized and because Mr. Oliver would not do it, and because he was an open-shop man, I am not taking sides with him. I am an open-shop man, it is true, and I believe in it as a principle, but I am not for paying Mr. Oliver unless he is entitled to it.

Mr. DEAL. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes.

Mr. DEAL. If, as has been stated, the closing of that shop, the seizure, was due to the agitation of labor unions, does the gentleman not think that it was the duty of the Government to have protected its property rather than to have seized and destroyed it?

Mr. BLANTON. Of course it was. The Government ought to have done it. If I had been the Secretary of Labor, I would have gone down there and told those union agitators to stand back and let this man run his business, and I would have told them, "If you have not anything to do while war is going on except to agitate here and cause trouble, then I shall send you over to the trenches of France and let you fight for your country."

Mr. SCHAFER. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. The gentleman will please not divert me. I want to discuss this case. Did the Government coerce Mr. Oliver? Let us see what he says about it himself. Let us see not what he said the day before yesterday, or some six years after the transaction, but let us see what he said about the time or just a few years after that time. What actually occurs and what is said and done by a defendant shortly after the transaction in question, before his mind has time to cool is called res gestæ in the case. And the defendant is permitted to rehearse it on the trial. Then much credence is given to it. Great weight is given to it. It is the res gestæ of the transaction. What was in the mind of Mr. Oliver before he filed his claim? Mr. EDMONDS here, chairman of this committee, before this claim was filed sent him a telegram congratulating him on the outcome of his case when it was dismissed, and Mr. Oliver wrote back quite a long article, which Mr. EDMONDS had published in the Manufacturers' Journal.

Let us read it and see what Mr. Oliver says about what the Government did, and let us see what Mr. Oliver then said about bonds being in the sum of $8,000 and about whether or not the Government took them away. And what does he then say about this man who was put in charge? Was it a man put in there by the Government, or was it a man that he agreed to put in there at the instance of his own corporation? Here is this statement, signed by Mr. Oliver himself, that passed through the hands of the chairman of the committee, who has kindly permitted me to use it. Mr. Oliver says:

A company of soldiers was brought from Chattanooga. The United States marshal and all of his deputies, the district attorney, and other agents of the Department of Justice and the Ordnance Department all came down in a body, deprived us of every means of communication, cut our telephone wires, placed men with drawn revolvers at the office and plant entrances, seized and stuffed into mail pouches, sacks, waste baskets, etc., our valuable office books, papers, and records, and a number of them went through the plant and sought certain of the employees who had made affidavits secretly but who had not been discharged, and with their assistance went to the different locations in the plant where parts of shell and other evidence which had been prepared in support of their evidence was hidden.

We were not given a receipt at that time for the papers, records, shells, and other material taken from the plant, but after application had been made at the preliminary hearing, which was never finished on account of my injury, we were permitted to review these papers and

other things in their possession, or at least those that had not been removed by them; and our factory stock book, minute book, some Liberty bonds, and war-savings stamps have never been accounted for, and of course they deny their seizure.

"Some" bonds and "some" war-savings stamps have never been accounted for, but he said that even then the Government denied their seizure. Has not the Government the right to still deny that seizure?

Mr. EDMONDS. That was written two or three years ago.

Mr. BLANTON. That is what I say. It was written quite a while before he filed this claim in Congress. Does he write our friend the chairman of the Committee on Claims that he had $8,000 worth of bonds lost? No. He said there were some bonds missing, but he says even then that the Government denied the seizure of them.

Mr. TAYLOR of Tennessee. The gentleman would not expect the Government officials to admit their seizure, would he?

Mr. WATKINS. They would admit it if they pay this claim.

Mr. RAMSEYER. What is the gentleman reading from?

Mr. BLANTON. From a signed statement of Mr. W. J. Oliver, the claimant, which he voluntarily made and sent to our chairman, in response to a congratulatory telegram, long before he ever filed a claim.

Mr. RAMSEYER. I see it is printed.

Mr. BLANTON. The chairman, Mr. EDMONDS, let a manufacturer's journal have it to print, and Mr. Oliver made it, knowing it would be so printed. I want to read a little part of it.

Mr. BEGG. If the gentleman will yield, does the gentleman think the facts in that newspaper article, he knowing it was to be printed, that using the term "some" ought to work against him in his statement?

Mr. BLANTON. Does the gentleman from Ohio believe that because he used the word "some" we ought to give him $8,000?

Mr. BEGG. That all depends upon the proof of loss.

Mr. BLANTON. He has not proven it yet to my satisfaction and belief, and I have seen everything that any man here has seen in the record. Why can not we leave this for the court to settle? Why can not we have these things adjudicated on evidence and not on theoretical possibilities? Why are we not doing this man full justice by saying, "You have not got any claim against the United States legally. You can not go to the Court of Claims and sue, but nevertheless we will let you do it. We will confer jurisdiction on the Court of Claims and let you and your attorneys go there and have the processes of the court and bring your witnesses there and let them be sworn and let the court hear the testimony and render a righteous judgment as to what you are entitled to under the facts in the case." What more could you ask? Are we going to sit here and decide these cases on "may be so"? I never repeat anything I overhear, and call names, but when my friend from Texas [Mr. Box] got up here to begin his argument against this case I heard an awfully good friend of ours, a fine man, get up and say, sotto voce, "If I am going to vote for this bill I have got no business to sit here and listen to Box's argument that may change my decision"; and he got up and walked out [laughter], got up and walked out, and he is going to vote for a bill and does not want to be convinced that it is not right.

Of course, he laughed when he said that, but he is out now and a friend right here near me heard him when he said that. What are you going to do in a case like that? If you pass this bill giving this man $170,000, as provided for in this committee amendment, do you know what is going to happen? It will go across the hall here, and it will probably come back to us and have a paragraph here containing not $170,000 but $1,438,000, as claimed in the bill, and there is not one of us who can force a rehearing of this matter before our colleagues, and it will be passed without further argument and the money paid.

Mr. WEFALD. Will the gentleman yield?

Mr. BLANTON. I yield to my friend because I notice he is on my side of the aisle.

Mr. WEFALD. At present.

Mr. BLANTON. I am satisfied if he keeps on it.

Mr. WEFALD. I want to see if I understood the gentleman from Texas [Mr. Box] correctly. Am I to understand that this concern was practically insolvent at the time of the seizure?

Mr. BLANTON. No; I do not think Mr. Box went that far. He is a very fair man.

Mr. WEFALD. Wait until I make my statement.

Mr. BLANTON. He said Mr. Oliver owed a large amount of money to his corporation.

Mr. WEFALD. I say it was my impression gathered from his remarks, and I was listening very attentively.

Mr. BLANTON. The gentleman did not understand it correctly.

Mr. WEFALD. I find one of the items that the committee feels it should reimburse for is an item of $61,000.

Mr. BLANTON. For salary.

Mr. WEFALD. Based upon salary.

Mr. BLANTON. And that is foolish.

Mr. WEFALD. It is $50,000.

Mr. BLANTON. I will not entertain that proposal at all.

Mr. WEFALD. Let me make my statement or ask the question. I want to know—the gentleman says he examined all of the records—if there was anything in the record to show, if the concern that was in that financial condition, that a man was entitled to draw a salary of $50,000 a year? I ask the question, and I would like an answer.

Mr. BLANTON. I will try to answer the question. Our friends, who were behind this claim in pushing it, seem to think it is a circumstance in favor of this man that he was drawing from the W. J. Oliver Corporation $50,000 a year and have argued that that was a great big thing in his favor during the war. I think it is a circumstance against him. I think in war time when a man owns a corporation—and they admit he practically owned it all himself—that when he owns it and he is making munitions for the Government at a time when contracts were made by the Government allowing cost plus 10 per cent as the profit a man should get, that he should agree to pay himself $50,000 a year—and he is the only man to decide that question that he is to allow himself $50,000 a year, and in war times—he was asking a great deal from the Government. There is not a man on God's earth who is worth $50,000 a year, especially during war time.

I want to say this, that at the very first opportunity that I get I am going to vote for a measure which in war times will give the President of the United States the right to draft every man he wants, to draft every bit of material he wants, and all the money and property he wants, and to draft labor, and tell them where he wants them to work, and if a man gets up and rebels against it shoot him against the wall. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. EDMONDS. Mr. Chairman, I would like to ask the gentleman two questions. One is, Does he not think that during the war the men who got $50,000 a year did better service than the men who got $1?

Mr. BLANTON. I think that some of the men who got $1 a year cost the Government more money than if they had been paid $50,000 a year.

Mr. EDMONDS. The second question is this, whether the undue and enlarged activity around Knoxville, Tenn., in regard to the Oliver plant by the intelligence department and other activities of the Government drew all the men away from the aircraft plants out in Ohio and let things go on the way they did?

Mr. BLANTON. I am not prepared to answer that. I do not know.

Mr. KETCHAM. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes.

Mr. KETCHAM. Does the gentleman think it is quite a fair statement to make, questioning this man's patriotism for having drawn this unusual salary, in view of the fact that the record shows, I believe, that he was offered $100,000 by another concern, and at the request of the Government he remained on the job to see this shell contract through?

Mr. BLANTON. Well, I think he deserved much credit for turning down that offer, but I do not think he deserves as much as the gentleman believes he does. Probably the very busy concern that offered him $100,000 was operating on this cost-plus 10 per cent basis, as was done in some places where the cantonments were being constructed, where contractors were telling the men to work only an hour a day or two hours a day, and that it was all right, and that there was more money in it for them, and that it would make the jobs last longer. That was going on all over the country; not only in one place, but all over the country. The President could not keep it down. Human nature asserts itself, the average greed of human kind. That is what the President had to contend with. It was not the President's fault. Some of his apparent friends turned out to be enemies. He could not depend upon them—Republicans and Democrats alike. They were grasping all over the country. He had confidence in them, but they did not measure up to the standard that he gave them credit for.

Mr. KETCHAM. I would like to ask the gentleman another question.

Mr. BLANTON. Yes.

Mr. KETCHAM. In view of the fact that the record shows that after this man's leadership in the direction of that plant was given over to the trustee the cost of these shells was increased $3.25 each, does the gentleman think his characterization of Mr. Oliver is quite fair?

Mr. BLANTON. I will say that whenever the Government takes over anything it costs more. It was so with the railroads. I knew it would be. It costs me nearly twice as much now to go to Texas as it used to cost before the war.

Mr. SCHAFER. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes.

Mr. SCHAFER. How about the Post Office Department? If the Government did not own and operate the Post Office Department what would it cost to-day?

Mr. BLANTON. The gentleman is diverting me again. I would like to yield. I sit here with the gentleman from Wisconsin and with the gentleman from Minnesota, and we differ on some labor questions, but we are, notwithstanding that, good friends all the time. I appreciate them, and I believe they appreciate me in the work I am trying to do.

Mr. WEFALD. I do.

Mr. BLANTON. There is no very great antagonism between any of us in this House. We disagree only on a few fundamentals. But I am discussing this particular case now. Shall we sit here as a court and jury, without any witnesses, without testimony, and try this case, and give a man $170,000 or $1,430,000—which could be done by another body—or should we send the case to a court, where a righteous verdict would be rendered under the rules of law and equity?

Mr. WEFALD. I want to say that I think the gentleman from Texas is one of the most useful Members on the floor of this House.

Mr. BLANTON. While I do not deserve that tribute, I thank the gentleman.

Mr. WEFALD. The gentleman said something about the labor unions and the efforts of those men to unionize the shop. I would like to know whether you think that the fact that these union men knew that this man was drawing $50,000 a year might not have had something to do with their attempt to unionize the shop?

Mr. BLANTON. Yes. He set a bad example for them; there is no question about that. But I want to say that human nature is such that, as the gentleman knows, there are labor-union leaders right now that are drawing salaries of almost as much. Did the gentleman know that? They are drawing salaries away up in high figures. That is the reason why bricklayers in Chicago are demanding $25 a day. It is because some of the officers of the unions are drawing big salaries of $25,000 a year.

Mr. WEFALD. But none of them make $50,000 a year, and they are performing a very useful service.

Mr. STEVENSON. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes.

Mr. STEVENSON. I agree with the gentleman, and I indorse entirely his statement a while ago, that if the Government owes this man anything it ought to pay him, and you make provision for payment in your amendment. But if we owed this man something six years ago, why do you deny him the interest on it? If the Government owed him something six years ago, why do you impose that limitation?

Mr. BLANTON. Because it is bad for the Government ever to pay a man for a tort, any kind of a tort. It is bad policy, and the law recognizes that. Under the law you can not recover from the Government for a tort by the Government. You ought not to include that in allowing for a claim. If Mr. Oliver's claim is based upon the facts he presents, he will get enough money from the judgment of the Court of Claims to relieve him very materially and make him feel pretty well satisfied, now that the war is over.

Mr. STEVENSON. Then the idea of the gentleman's amendment is that we are saying to the Court of Claims they are not to allow interest, but we are serving notice on them that they can put enough on the claim to cover interest? Is that not about it?

Mr. BLANTON. No. As I said the other day, I am acquainted with the personnel of this court. The judges are fair-minded men; they are unusually fair-minded men of high integrity and high purpose. They are going to do what is right, and at the same time I believe they are going to protect the people's Treasury. The President had confidence in them when he appointed them, and we have confidence in them. It is a court created to pass upon these matters; so let us send this claim to it and have it pass on it.

Mr. UNDERHILL. Will the gentleman yield?

Mr. BLANTON. Yes.

Mr. UNDERHILL. Will the gentleman let us decide here whether we will send it to the Court of Claims or whether we do not desire to do so, but pass upon it as reported by the committee?

Mr. BLANTON. I am going to do that in five minutes, if I am not interrupted, and after I make one or two other statements.

Mr. WATKINS. Will the gentleman yield to me for a question?

Mr. BLANTON. I will yield for one more question.

Mr. WATKINS. I agree somewhat with the Secretary of War wherein he says this claim is in the nature of damages for malicious prosecution. If the gentleman does not agree with that, I would like to know if he can understand why the committee drew a bill in which it pays to one identity, William J. Oliver, a certain sum of money for the holding of property of another identity, the William J. Oliver Manufacturing Co. Did the gentleman hear my question?

Mr. BLANTON. I regret that my attention was diverted by the chairman of the committee, who was privately asking me some questions.

Mr. WATKINS. I will repeat it. I agree somewhat with the Secretary of War that this claim is in the nature of allowing damages for malicious prosecution, for which, the chances are, Mr. Oliver could not recover damages if he went into court. If that is not true, then why does the committee draw a bill giving to one identity, William J. Oliver, in person, a sum of money which really ought to go to the William J. Oliver Manufacturing Co. for the benefit of creditors?

Mr. BLANTON. Well, I will answer the gentleman. The committee seemingly wants to pay him for what they think was his loss, first, in wages, amounting to $50,000 a year; then they want to pay him for $8,000 worth of bonds which they think he lost; and then they want to pay him because they say he owned all the property of the corporation, and, as a matter of fact, William J. Oliver was the corporation; then they want to pay him for these other things.

But I want to tell you something the gentleman does not know, and I am not telling any secrets, because when a Member of Congress finds out things which affect the people of the country it is not a secret; it is Government business. If you pass this bill and allow this money, you are not done with this case. Do you know what the committee is going to do? It is going to bring in another bill which will provide for the sending of his case, on another feature, to the Court of Claims, and allow him $200,000 more. That is what they are going to do, and that is one of the very purposes and one of the very reasons that actuates me in offering this amendment to send it in the first instance to the Court of Claims and let them determine it from every angle and not here decide this matter by piecemeal.

Mr. BURTNESS. Will the gentleman yield?

Mr. BLANTON. I am going to yield this time, and then I want to read something which has never been read into the RECORD yet.

Mr. BURTNESS. My question pertains to your proposed substitute. Should the substitute be limited to the equitable rights of Mr. Oliver? Why should it not include any rights the corporation, as such, might have, so as to clear up everything?

Mr. BLANTON. The gentleman overlooks one feature of the amendment, which is that jurisdiction is conferred on the Court of Claims to hear the law, the equity, and facts of the case, both as to Mr. Oliver and his corporation.

Mr. BURTNESS. As I heard it read it referred to Mr. Oliver as president of the corporation. Why not give the same rights to the corporation as such?

Mr. BLANTON. Well, I have framed it in that way. The corporation is now defunct and that is the reason I drew it like I did; the corporation is dissolved.

Mr. BURTNESS. I think the corporation still exists as far as creditors are concerned.

Mr. BLANTON. No; the gentleman from Tennessee told us it was dissolved and was defunct. I want to read you one other paragraph and then I am done. Here is what Mr. W. J. Oliver himself says, not to-day, but several years ago, before he filed this claim, when it was fresh in his mind. They have asked who was Mr. Wright and what connection he had with Mr. Oliver, and here is what Mr. Oliver says:

> Hon. T. A. Wright, of this city, met with the representatives of the Ordnance Department the day following the arrest and by persistent effort succeeded in having the plant put in charge of a trustee, acceptable to both the Government and to my interest, and in this way prevented them from actually taking possession of it.

He says that his attorney, Mr. Wright, went to them and had them appoint a trustee who was acceptable to him and in that way prevented them from actually taking over the plant. Now, don't you think that you should hear the War Department's side of this question? Before you reach any conclusion you ought to hear the Department of Justice's side of this question. If there is blame attaching to the Department of Justice, I want the Court of Claims to fix the blame and give this man the benefit of it in the way of remuneration for everything he has suffered in the way of his business relations with the Government, not for his arrest but for his business relations with the Government.

It has been said that the court down in Tennessee decided that the Government did not have any reason for arresting this man and taking charge of his property, and that he was blameless.

Here is the judgment of the court:

In the United States District Court at Knoxville, Tenn. United States of America v. W. J. Oliver et al.

There are 26 counts to this indictment, as to each of which each defendant pleads not guilty. The pleas placed on the Government the burden of proving the guilt of the defendants beyond a reasonable doubt. The Government has introduced all its evidence, at the close of which the defendants ask the court to direct a verdict of not guilty under every and each count of the indictment as to each of the defendants on the ground that the evidence, if true, does not establish their guilt or that of either of them beyond a reasonable doubt.

The presumption of law is that the defendants are not guilty, but are innocent of the offenses charged against them. This presumption is evidence in their favor, and they must be acquitted in the absence of substantial evidence, which, if true, meets and overcomes this presumption and so establishes their guilt.

For the purpose of this motion the evidence must be taken to be true, and in considering it it must be given the strongest construction against the defendants it will bear. The question then arises if when so considered does it, as a matter of law, prove the guilt of the defendant or either of them under all or either of the counts in the indictment beyond a reasonable doubt? Each of the first four counts charges the offense of conspiracy to defraud the United States and also alleges certain overt acts of the defendants done in furtherance of the purpose and object of each of the alleged conspiracies. There is no direct evidence of a conspiracy. That fact, like any other fact, may, and oftentimes is, conclusively established by circumstantial evidence. In such case the circumstances must be so strong as to exclude every reasonable hypothesis consistent with innocence. To state the rule another way, if the circumstances proven can be as reasonably reconciled with innocence as with guilt, then the law requires that it be reconciled with innocence. And again, if the circumstances be as consistent with innocence as with guilt, the defendant must be acquitted.

I think the circumstances in evidence in this case relied upon by the Government as proving the charges of conspiracy fall far short of meeting the requirements of the rule thus stated.

From like consideration, the evidence offered tending to prove the allegations in counts 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, and 25, which charge the defendants with having done certain things specifically stated in those counts, with the intent to injure, interfere with, and obstruct the United States in prosecuting and carrying on the war in which it was engaged by the commission of the alleged unlawful acts, I think, also is as consistent with innocence as with guilt, and in the light of a presumption with innocence can be as reasonably reconciled with a conclusion of lawful intent as with a conclusion of unlawful intent.

The evidence is voluminous, and it would serve no useful purpose to review it here further than to say that many witnesses introduced by the Government testified, among other things, that while at work in the plant of the W. J. Oliver Manufacturing Co. under the direction of and with the defendants, they heard nothing and saw nothing that gave them reason to believe that the defendants, or either of them, intended by what they did or said that they were doing the things to which the witnesses testified with the intent to injure or interfere with or obstruct the United States in the prosecution of the war. By introducing these witnesses the Government said they were worthy of being believed.

For present purposes it is sufficient to say that the motion for a directed verdict in favor of all the defendants as to the first four counts of the indictment and also counts 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, and 25 must be allowed, and the jury is directed to return verdicts of not guilty as to each of the defendants under each of the counts named, and that will be your verdict, so say you all.

The evidence is, at this time, as I think, such as requires the submission of the case to the jury on counts 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, and 26, and as to these counts the motion is overruled.

McCALL, *Judge.*

You will note that this judge mentioned almost a dozen counts which he said he was going to submit to the jury where he thought the facts in the case warranted a submission of them to the jury on those counts, and the very minute he rendered that decision the district attorney got peeved, I imagine. I have seen them get peeved when courts would sustain demurrers to indictments, and I have seen them come in and say, "Well, if the court is going to hold in that way, I will not go on any further with the case and will just nol-pros the balance of the counts." The record shows that is just what happened in this case. If you will read the succeeding judgment, you will find that as soon as the court attempted to submit these other counts in the indictment to the jury, the district attorney came in and nol-prossed the balance, showing some peevishness, and would not submit the 11 counts to the jury for determination.

Now, gentlemen, I am not going to take up any more time. I hope my colleagues will see fit to do justice to both this man Oliver and to the Government, and they can do that only by submitting this case to the Court of Claims for hearing and determination.

I ask unanimous consent to revise and extend my remarks.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to revise and extend his remarks. Is there objection?

There was no objection.

The CHAIRMAN. For what purpose does the gentleman from Pennsylvania rise?

Mr. EDMONDS. Mr. Chairman, I ask unanimous consent to close all debate in one minute.

Mr. LOZIER. I want half a minute.

Mr. LAGUARDIA. I want some time.

Mr. BOX. I object to closing debate in one minute.

Mr. WINGO. May I suggest to the gentleman that he had better find out whether he can pass the bill this afternoon. If it runs on much longer, we are going to find ourselves without a quorum.

Mr. EDMONDS. I ask unanimous consent that all general debate close in 10 minutes.

Mr. LAGUARDIA. Reserving the right to object, I am going to ask recognition, and I will be glad to limit myself to 10 minutes.

Mr. EDMONDS. Will the gentleman not limit himself to nine minutes and give the gentleman from Missouri one minute?

Mr. LAGUARDIA. Yes.

The CHAIRMAN. The gentleman from Pennsylvania asks unanimous consent that general debate on this bill close in 10 minutes. Is there objection?

There was no objection.

Mr. LOZIER. Mr. Chairman, I am unwilling to vote to send this measure to the Court of Claims, because I think it bad policy to load the Court of Claims with bills and demands which we believe have no legal, ethical, or equitable foundation.

I am unwilling to vote for this measure because, when reduced to its last analysis, it calls for an allowance of $61,000 for salary, when the undisputed facts show that the physical and mental condition of Mr. Oliver was such that he could not, during the time in question, have rendered any services of any kind or character or earned anything whatsoever.

I am unwilling to vote to reimburse claimant for the alleged $101,000 damages, for the reason that the evidence shows that the Secretary of War made a settlement with Mr. Oliver's company, and the company executed a release in full settlement and discharge of all claims and damages.

I am unwilling to vote for the reimbursement on account of the alleged $8,000 worth of Government bonds and war savings stamps, because there is no persuasive, or at least no convincing, evidence that he had that amount of bonds or savings certificates in his desk when the Government took possession of the factory, and for the additional reason that there is no evidence to show who, if anyone, appropriated those bonds, and for the still further reason that there is no well-considered precedent or sound public policy which will justify our appropriating money to reimburse some one for a tort or embezzlement of an agent or officer of the United States Government.

Mr. LAGUARDIA. Mr. Chairman and gentlemen, in passing upon bills from the Committee on Claims this House is very much in the position of an appellate court. The least we can do is to take the facts as presented by the committee and pass upon the law applicable to those facts, the matter of policy, of course, to be likewise considered.

Assuming all of the facts as contained in the majority report of the committee to be true, have they stated facts sufficient to

warrant this House in appropriating the sum asked for in the bill?

In the first place, as just stated by my colleague, the gentleman from Missouri [Mr. LOZIER], Mr. Oliver comes in and seeks equity. Some of us learned in law school that when you come into court seeking equity you should use hand Sapolio, I believe it is, before the court will grant equity.

It is undisputed that this corporation has many creditors with claims against it. Whether it has been liquidated or is insolvent or defunct makes no difference. If you award compensation to Mr. Oliver, these creditors can not reach that money.

If they had asked for compensation for the corporation by reason of the wrongful acts alleged, then the corporation would be confronted with two situations, one a general release signed by it and its proper authorized officials to the Government of the United States in payment of $66,000; and, second, the lien of these creditors on any fund obtained from Congress. This is why the corporation is set aside, although it is admitted that Mr. Oliver owned all the stock of the corporation, and the claim is made by Mr. Oliver in personam.

Second, unfortunately Mr. Oliver was injured a few days after the seizure, but the Government had nothing to do with that, and we may properly disregard all of the damages flowing from the truck injury of Mr. Oliver at the time.

Third, it is not denied that this corporation was making defective shells at the time the Government stepped in. Whether the attention of the Government was brought by improper motives, by labor agitators or by anyone else, the fact remains it was making improper and defective shells, and the Government was justified in stepping in.

Mr. BYRNS of Tennessee. Where is the evidence the gentleman has of that fact? Is it not a fact that not a single shell that was manufactured by this company or corporation was ever rejected by the Government?

Mr. LAGUARDIA. It was my understanding, I will say to my colleague, that the shells were defective and a large amount of the shells were rejected. Is not that correct?

Mr. BYRNS of Tennessee. My understanding of the evidence is that there is no proof that this company was manufacturing defective shells and, on the contrary, it was thoroughly demonstrated later that it was not making defective shells.

Mr. LAGUARDIA. I will say to my colleague that after new specifications were presented to this corporation they complained that the specifications were impossible of compliance. That is in the record.

Mr. BYRNS of Tennessee. That does not prove that the company was doing anything wrong or was making defective shells.

Mr. TAYLOR of Tennessee. Will the gentleman yield?

Mr. BYRNS of Tennessee. I want to say, if the gentleman will pardon me, as I am just reminded by my colleague, the Secretary of War in his statement said that all the shells that were made were accepted and paid for.

Mr. TAYLOR of Tennessee. Every single, solitary shell was accepted. There was not a single defective shell.

Mr. LAGUARDIA. They were accepted and paid for up to October 4.

Mr. BLANTON. If the gentleman will yield, I want to correct one statement. The statement that Mr. Oliver sent to the chairman of the committee [Mr. EDMONDS] shows that all the shells were accepted except 2 per cent. Two per cent were rejected by the ordnance inspector.

Mr. LAGUARDIA. There surely was some question as to the quality of the shells. The factory was seized on October 4, 1918. On November 11, 1918, the armistice was declared. The trustee at that time could have elected to terminate his contract, but instead they continued to manufacture shells for several months. A part of the claim is for the difference in cost of manufacture under the operation of the trustee—not the Government—and the operation of Mr. Oliver himself—the difference in cost of production, which is nothing less than loss of profits, when they could have terminated and stopped the operation November 12, after the armistice.

Now, gentlemen, if this bill is passed at the next session you will have claims from the manufacturers of rotten raincoats, manufacturers of defective shoes, manufacturers of defective airplanes, and every profiteering contractor whose contract has been canceled for any reason. They are all going to come in and claim reimbursement. That is something that we must bear in mind. You will recall that in the closing days of the session, when we passed an amendment to the Veterans' Bureau bill, some of us wanted to provide compensation for veterans suffering from tuberculosis from the date of affliction, and it was claimed on the part of many gentlemen of this House that the Government did not have the money. The compensation was fixed in the bill from the time the act went into effect. Veterans suffering with tuberculosis for months, in some instances for over a year, were deprived of compensation which they did not receive owing to defects of the old law, and the new law passed for the purpose of doing justice to these suffering veterans would not even reach back and give them back allowance. Yet here it is intended not only to make up the difference in the cost of production, reimburse for alleged loss of Liberty bonds, pay for lost salary, but even to go so far as to provide in part "additional consequential costs and damages," as embracing as that item might be.

Gentlemen, I will concede that Mr. Oliver suffered the greatest wrong that is possible for an American to suffer—to be charged with defrauding the Government in time of war. But he has been vindicated by a jury, and it is difficult in the face of the adjustment made by the corporation with our Government after all this happened, to see how Mr. Oliver can be compensated further as an individual.

Do we want to establish now a precedent for compensation to every individual who is indicted for a Federal offense and acquitted by a jury? I sought to inquire from the gentlemen supporting this bill what had been done in the past six years to fix the responsibility for the alleged wrongful acts committed by the Government's agents in this case. On page 560 of yesterday's RECORD I put the question to my colleague the gentleman from Tennessee [Mr. TAYLOR], as follows:

Mr. LAGUARDIA. This bill and the compensation is based entirely, I take it, on the unjustifiable conduct of the Government. Has anything been done since 1918 to fix the responsibility, either in the Intelligence Department of the War Department or the Department of Justice, on the person or official who brought about this seizure?

Mr. TAYLOR of Tennessee. No; there has been nothing of that kind, of course.

Mr. LAGUARDIA. Somebody must have blundered if the gentleman's contention is correct.

I was then startled by the gentleman's reply which I read:

Mr. TAYLOR of Tennessee. We do not criticize the War Department and we do not criticize the Department of Justice; I think they were acting in good faith so far as they were concerned, but they were relying on misrepresentation by those German spies who were seeking not only in Knoxville at Oliver's plant but all over the country to wreck industry.

If there is no criticism of any department of the Government and if they acted in good faith there is no cause of action, legal or equitable, upon which Mr. Oliver can now claim damages.

I am inclined to believe that some one acted hastily. I will concede the terrible embarrassment and mental anguish suffered by Mr. Oliver at the time. But, gentlemen, if you stop to consider according to the evidence the financial condition of this company, the unfortunate accident to Mr. Oliver shortly after the Government stepped in, the fact that his company continued to manufacture shells when they could not have been compelled to do so after Armistice Day, and the important fact that there are still creditors with claims unpaid against this corporation, how can you justify your vote in giving Mr. Oliver the sum provided in this bill?

I repeat what I stated a few moments ago, that I dread the thought of the flow of bills that will follow if this one is approved by Congress. It was our belief and understanding in the Sixty-sixth Congress that we had provided the ways and means for settling all equitable claims against the Government, and the Members will recall that appropriations were provided generously for satisfying such claims. There were boards and commissions in the War Department and the Navy Department working for years in the settlement of these claims. Are we now and henceforth to consider every claim settled as in this case, or rejected by the departments after we provided the means for their adjustment? Claims will surely run into the hundreds of millions if every contractor who is dissatisfied with the settlement heretofore made or the rejection of his claim after all the facts have been considered will hear that they can get away with a bill of this kind.

In deference to the able argument made by the gentleman from Tennessee [Mr. TAYLOR], I will vote to give his constituent an opportunity to present this case to a court, but I conscientiously can not vote for the bill as it now stands or even if the committee amendments are approved. I serve notice now on my colleagues that I will scrutinize every single bill which will be brought in in this and the next Congress, and will do my one four hundred and thirty-fifth part to prevent a raid on our Treasury by dissatisfied, disgruntled war contractors.

The CHAIRMAN. The time of the gentleman from New York has expired. All time has expired, and the Clerk will read.

The Clerk read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $1,438,095.61 to the William J. Oliver Manufacturing Co. and William J. Oliver for damages sustained by said company and said Oliver growing out of the seizure and holding by the Government of the William J. Oliver manufacturing establishment at Knoxville, Tenn.

The Clerk read the following committee amendment:

Page 1, line 5, after the word "of," strike out "$1,438,095.61 to the William J. Oliver Manufacturing Co. and" and insert "$170,757.86 to," and in line 8 strike out the words "by said company and said Oliver."

Mr. BLANTON. Mr. Chairman, I offer the following amendment as a substitute for the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. BLANTON: Page 1, line 3, strike out all after the enacting clause and insert in lieu thereof the following:

"That the Court of Claims be, and it is hereby, authorized to hear and determine the claim against the United States of William J. Oliver, for himself individually and for equities inuring to him as the former president and principal owner of the stock of the corporation, the William J. Oliver Manufacturing Co., of Knoxville, Tenn., now dissolved, and of such corporation itself, and to award to him such damages, if any, as he may have actually incurred, based solely upon actual loss sustained, if any, without interest, resulting directly and proximately from the seizure of the business of said corporation in October, 1918, and the restraint thereafter held by the Government upon such property which exceeds, if it does do so, payments heretofore made by the Government. But no remuneration shall be allowed for wrongful arrest, if any, of the person of said William J. Oliver. All questions of law, equity, and fact are hereby expressly submitted to said Court of Claims for adjudication."

Mr. BEGG. Mr. Chairman, I make a point of order that the amendment is not germane to the bill. It has been so decided a number of times, and I should be very glad to call the attention of the Chair to the precedents.

The CHAIRMAN. The Chair is inclined to think the gentleman from Ohio is correct, but he will hear the gentleman from Texas.

Mr. BLANTON. I want to call attention to the title of the bill itself. It is "For the relief of the William J. Oliver Manufacturing Co. and William J. Oliver, of Knoxville, Tenn." That is the subject matter of the bill.

The CHAIRMAN. The Chair is governed by the text of the bill itself and not the title.

Mr. BLANTON. Here is a bill which sets forth that it is for the relief of William J. Oliver and a corporation now defunct, that the Government did a wrongful act to him and his business and he suffered a loss. It seeks to remunerate Mr. Oliver according to law and equity for the wrongful act by the Government. It seeks by the committee amendment to pay Mr. Oliver $170,000. The bill itself which the committee seeks to amend provides for the payment to Mr. Oliver of $1,438,000. I want to submit to the Chair that there is a very wide discrepancy between what the bill seeks to pay Mr. Oliver in settlement of his claim and the amount the committee seeks to pay him by amendment. It is the difference between $170,000 and $1,438,000.

Now, what is my substitute? My substitute says that on this bill which seeks to pay him $1,438,000, in lieu of the amendment which the committee offers to pay him $170,000 I propose as a substitute to send the case for adjudication to the Court of Claims and let the court settle it according to law and equity. If that is not germane, if a settlement offered in some other way is not germane, I do not know anything about germaneness. The purpose of this bill is to settle a claim. Various means of settlement when proposed are germane.

In my 25 years around courthouses I have represented many litigants in cases where they had involved large sums of money. I have stood at a table in front of the court and before juries in the determination of cases, and I have sat around a table outside in a compromise. We sometimes reached a compromise in settlement very different from the pleadings and contentions before the court and the jury, and then had the court enter the compromise into a judgment. This is a proper compromise that I am proposing, of giving him a hearing in court instead of paying him $1,438,000, as the bill proposes, or $170,000, as the committee amendment proposes.

The CHAIRMAN. The Chair would like to hear the gentleman from Texas on the point of order.

Mr. BLANTON. Mr. Chairman, my mind is not as finely educated in parliamentary law as that of the distinguished Charman, but I thought I was discussing the point of order. If I am not, I will submit the question without further argument to the Chair for his parliamentary mind to determine.

The CHAIRMAN. The point of order made by the gentleman from Ohio is that the amendment of the gentleman from Texas is not germane to the bill. The same question has arisen a number of times. In Hinds' Precedents, section 5851, it says that—

To a proposition to pay a claim an amendment proposing to send it to the Court of Claims was held not to be germane.

The specific question involved here was decided in the citation just given.

Mr. BLANTON. Mr. Chairman, would the Chair permit me to ask the gentleman from Ohio a question?

The CHAIRMAN. Relating to the point of order?

Mr. BLANTON. Yes.

The CHAIRMAN. Yes.

Mr. BLANTON. The gentleman from Ohio stands here as the administration's representative to protect the Treasury. Does he want to make the point of order here and force it to be sustained by the Chair, and let another body place in this bill $1,438,000 to give this man when under the facts of the case there may be nothing due him? If he does, let him make the point of order.

Mr. BEGG. I say to the gentleman from Texas that the gentleman from Ohio is perfectly willing to proceed in order.

The CHAIRMAN. Further proceeding in the decision, the Chair directs attention to a decision by Chairman Campbell, on October 3, 1919, in which it was decided:

To a proposition to pay a claim an amendment to permit the claimant to sue the United States in the United States district court was held not to be germane.

In that decision the Chair cited with approval the former decision referred to by the Chair.

Based on those two decisions and upon the general principle that an amendment must be germane, the Chair sustains the point of order.

Mr. BURTNESS. Mr. Chairman, I offer the following amendment to the committee amendment, which I send to the desk.

The Clerk read as follows:

Amendment by Mr. BURTNESS: In the committee amendment strike out the figures "$170,757.86" and insert in lieu thereof the figures "$61,032.86."

Mr. BURTNESS. Mr. Chairman, the theory of the entire committee amendment, as I understand it, is this, that they are limiting or intending to limit the recovery in this case of the damages suffered by Mr. Oliver himself and not damages suffered by the William Oliver Manufacturing Co., on whose behalf, in part at least, the bill was introduced by the author. It seems to me that the items that have been recommended by the committee with reference to the loss of bonds and the item with reference to the loss to the corporation because it cost them more to manufacture these shells after the corporation was in the hands of the trustee are items which concern only the corporation as such and are not items which concern Mr. Oliver individually. I recognize also the force of the argument made by a number of Members who have spoken here, to the effect that, with reference to the items as to this additional cost, that has been fully settled by the War Department. I think if this bill is passed by this House it is largely because of the feeling of sympathy for Mr. Oliver personally and for the loss which he personally suffered.

Mr. BOX. Mr. Chairman, will the gentleman yield?

Mr. BURTNESS. Yes.

Mr. BOX. If Mr. Oliver was personally injured and incapacitated to attend to this business, even to present his claim to the War Department properly, as was contended here, upon what theory does the gentleman think he is entitled to the salary?

Mr. BURTNESS. I am frank to say to the gentleman that I doubt whether upon any legal theory he is entitled to the salary under any circumstances, but I am inclined to think that the sentiment of the House is such that the Members feel that this man was treated very harshly by the Government, and that his organization was, and I think there is a good deal of sympathy here for the condition in which this man finds himself at this time; and if by any stretch of the imagination it can be claimed that this injury which he suffered was the proximate cause, or if not the proximate cause the moral cause, due to the action of the Government in seizing the plant, due to the fact that he was asked by the district attorney to go to the

courthouse on that particular day, that it can be argued with at least some show of reasonableness that he lost his salary after that, and the committee, as I understand it, claims that the salary amounted to $61,000 and odd, and it is upon that theory that I suggested the amount.

Mr. BOX. May I call attention to the fact that the auditor said that if Mr. Oliver had been permitted to work that the corporation would have been paid what he owed it in his services?

Mr. BURTNESS. Yes; I understand that that is really the situation, although the theory that the majority report is written on is the theory that Mr. Oliver actually lost this amount in salary. Of course, it is rather peculiar that that amount happens to be the figure that Mr. Oliver was owing to the corporation, and that is one of the peculiar things about this bill. I am frank to say that unless this bill is cut down to about the figure that within reason it may be claimed Mr. Oliver lost personally, I shall be inclined to vote against the bill.

Mr. BEGG. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from North Dakota has expired.

Mr. TINCHER. Mr. Chairman, I think the item in the bill allowing Mr. Oliver for the difference in the cost of manufacturing his shells is perhaps as just a matter as could be in a bill.

I do not think there is any record of our Government ever treating any citizen any worse than Mr. Oliver was treated. [Applause.] There was a written agreement demanding that he stay away from his business and let another man manage it. It was signed when he was surrounded by officers of the Government, and the statement was made in the room and undenied that it was by force. They said to him, "You do it at once." They proceeded to manufacture shells at $3.25 more than he manufactured them for after he had signed a written agreement to stay out of his own plant. You cut out that item and I do not understand that the Government is going to be fair. He has been treated so manifestly unfairly that I think that the American Congress should go on record as saying that we are willing to atone, in a way, not fully. This man was said to have been worth around a million dollars, and it is only proposed in this bill to give him $170,000, and I want to say to my friend who offers this amendment I think, perhaps, the item he seeks to retain in the bill is the weakest item, and that is the salary item.

The CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from South Dakota.

Mr. BLANTON. Mr. Chairman, I offer a substitute for the amendment offered by the gentleman from South Dakota; that is, to strike out the "$61,000" and insert in lieu thereof the following: "$10,000, payable in monthly payments of $57.50." I want to be heard when the Clerk reports the amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment by Mr. BLANTON to the amendment offered by Mr. BURTNESS: Strike out "$61,032.86" and insert in lieu thereof "$10,000, payable in monthly payments of $57.50."

Mr. BLANTON. Mr. Chairman, whatever the Government did to Mr. Oliver it did it while the World War was in progress. During this same time, when we needed men over in the front-line trenches of France, the Government sent a little note to a splendid young man in my district, who was married, and said to him, "No matter how well qualified you are to conduct your private business and enjoy the proceeds of your earnings, you quit your business and your home and wife and family and your friends and go to France." And he did go and he did not come back, and he is in his poppy-covered grave there now; but to his little widow the Government granted $10,000, which it pays to her in installments of $57.50 a month.

Mr. SCHAFER. Will the gentleman yield?

Mr. BLANTON. Why should we treat Mr. Oliver, of Knoxville, Tenn., any better than we do the little widow of the man who went to France?

Mr. SCHAFER. Will the gentleman yield there?

Mr. BLANTON. I will yield.

Mr. SCHAFER. I agree with the gentleman's statement.

Mr. BLANTON. But will not vote for my amendment?

Mr. SCHAFER. I will vote for it.

Mr. BLANTON. Good; I have at least one other vote for my amendment.

Mr. SCHAFER. But the gentleman neglected to mention one fact that the soldier, out of the $1.25 a day, had to pay somewhere around $7 or $7.50 for insurance.

Mr. BLANTON. Yes; it was taken out; and also out of this salary of $33 a month he had to have some more taken out by the Government to keep up his little widow, because she was dependent upon him. Now, why make fish of one and fowl of another? Why not treat all alike? The great administration's watchdog of the Treasury [Mr. BEGG] would not let my amendment go through here to send this case to the Court of Claims to be adjudicated according to equity, the law, and the facts. This is one of the particular cases that he wants to go through for some reason, and a large sum be paid without proper adjudication.

Mr. SCHAFER. Will the gentleman yield there?

Mr. BLANTON. The gentleman from Ohio seemingly wants the House to grant $170,000 to this man, and then he wants that bill to go to the other end of the Capitol, where somebody else will have the power and authority to change it, and put in $1,438,000; and then it will come back here, and there is not a man here who can stop it.

Mr. SCHAFER. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes; but please do not take up all my time.

Mr. SCHAFER. The passage of this bill is carrying out the administration's so-called policy of economy, is it not?

Mr. BLANTON. I am not in a partisan mood right now. I am trying to be a statesman. [Laughter.] But I want to say this to the majority leader: His President has spoken for economy. His President believes in paying the just debts of this Government. His President wants every dollar to be paid to William J. Oliver that ought to be paid. But the President, I know, wants the matter to be adjudicated in a court on the basis of law and according to the rules of equity. I am going to make a motion for the committee to rise, and if my motion prevails it will stop the passage of this bill and give the absent Members an opportunity to find out something about it.

The CHAIRMAN (Mr. BURTON). The time of the gentleman from Texas has expired.

Mr. BLANTON. Mr. Chairman, I move that the committee rise, and I hope the majority leader will help us rise and let us come back here at some other time on this bill.

Mr. BEGG. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. BEGG. Did the Chair recognize the gentleman from Texas for that purpose?

The CHAIRMAN. The gentleman from Texas moves that the committee do now rise.

The question was taken, and the Chairman announced that the noes appeared to have it.

Mr. BLANTON. I ask for a division, Mr. Chairman.

The CHAIRMAN. A division is demanded.

The committee divided; and there were—ayes 14, noes 57.

The CHAIRMAN. The motion is lost.

Mr. BLANTON. Mr. Chairman, I make the point of order that there is no quorum present.

Mr. LONGWORTH. Mr. Chairman, I demand tellers.

The CHAIRMAN. Tellers are demanded. Those in favor of taking the vote by tellers will please rise and stand until they are counted.

Tellers were ordered, and the Chairman appointed Mr. LONGWORTH and Mr. BLANTON to act as tellers.

The committee divided; and the tellers reported—ayes 4, noes 82.

The CHAIRMAN. The question now is on the motion——

Mr. BLANTON. Mr. Chairman, I move that the committee rise. No: I will withdraw that motion and give the gentleman from Pennsylvania [Mr. EDMONDS] an opportunity to make that motion.

Mr. EDMONDS. Mr. Chairman, I move that the committee do now rise.

The CHAIRMAN. The gentleman from Pennsylvania moves that the committee do now rise. The question is on agreeing to that motion.

The question was taken, and the Chairman announced that the noes appeared to have it.

Mr. BLANTON. A division, Mr. Chairman.

The CHAIRMAN. A division is demanded.

The committee divided; and there were—ayes 22, noes 51.

Mr. BLANTON. Mr. Chairman, I make a point of order on that vote. I made a motion to rise. It was defeated on a rising vote. The gentleman from Ohio [Mr. LONGWORTH] asked for tellers on the motion to rise. The committee, according to the tellers' report, decided not to rise, but there was not any quorum present. I had made a point of order that there was not any quorum present.

The CHAIRMAN. The gentleman from Texas is entitled to claim that there is not a quorum present, but the Chair can not be sure that all who were present voted.

Mr. BLANTON. I now make the point of order that there is no quorum present.

Mr. LONGWORTH. Let the Chair count.

The CHAIRMAN (after counting). One hundred and nine Members are present—a quorum.

Mr. EDMONDS. Mr. Chairman, I move that all debate on the bill and amendments thereto be now closed.

The CHAIRMAN. The gentleman from Pennsylvania moves that all debate on the bill and amendments thereto be now closed.

Mr. BLANTON. I make a point of order against that motion, that it is not in order when we are considering the bill under the five-minute rule; that it is not in order at this time as to other amendments that may be offered to this bill. It has always been so held that when there is a legitimate amendment to be offered it is not in order to move to close debate. I call the attention of the Chair to what happened in the consideration of the war resolution. In that debate Mr. Speaker Clark held that so long as there were members in the Committee of the Whole seeking to offer legitimate amendments a motion to close the debate was not in order.

Mr. BEGG. Mr. Chairman, I wish to call the Chair's attention to the fact that we are proceeding under the five-minute rule. We have just completed reading a paragraph, and it is customary—and it is done every day—to close debate on a paragraph and amendments to a paragraph.

Mr. BLANTON. This is an entire bill.

Mr. BEGG. It is all one section, and it is not an unusual motion to make. I will call the attention of the Chair to the fact that we are proceeding at the present time under the five-minute rule, and when operating under the five-minute rule, after five minutes' debate or five words of debate, it is in order to close debate on that paragraph and all amendments thereto; and that was the gentleman's motion, as I understand.

The CHAIRMAN. The Chair will state that this is decided by section 6 of Rule XXIII:

> The committee may, by the vote of a majority of the members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

There is but one section in this bill, and it seems to the Chair the motion, so far as closing debate is concerned, is in order.

The question was taken, and the motion was agreed to.

The CHAIRMAN. The question now is on the substitute motion of the gentleman from Texas for the committee amendment.

The question was taken, and the Chair announced that the noes appeared to have it.

Mr. BLANTON. Mr. Chairman, I demand a division, and, Mr. Chairman, may I have the substitute read again for the benefit of those Members who have just come in?

The CHAIRMAN. Without objection, the substitute will be again read.

There was no objection.

The substitute was again read.

The committee divided; and there were—ayes 6, noes 74.

So the substitute was rejected.

Mr. BLANTON. Mr. Chairman, I offer a substitute for the Burtness amendment, striking out $61,032.82 and inserting in lieu thereof $75,000.

The CHAIRMAN. The Chair calls attention to the fact that there is a limit to the right of amendment, and the substitute seems to the Chair beyond the right of amendment.

Mr. BLANTON. Mr. Chairman, may I offer this to the Chair? There is a main proposition, an amendment, and a substitute always in order on every proposition.

The CHAIRMAN. The Chair would rather err on the side of giving a chance to offer a substitute. If the gentleman has a substitute ready he may present it. What is the substitute?

Mr. BLANTON. The Clerk has it.

The CHAIRMAN. The Clerk will report the substitute.

The Clerk read as follows:

> Substitute offered by Mr. BLANTON for the amendment offered by Mr. BURTNESS: Strike out $61,032.86 and insert in lieu thereof $75,000.

The CHAIRMAN. The question is on agreeing to the substitute offered by the gentleman from Texas for the amendment offered by Mr. BURTNESS.

The question was taken, and the substitute was rejected.

The CHAIRMAN. The question now recurs on the amendment proposed by the gentleman from North Dakota [Mr. BURTNESS].

The question was taken, and the amendment was rejected.

The CHAIRMAN. The question now recurs on the amendment proposed by the committee.

The question was taken, and the amendment was agreed to.

The CHAIRMAN. The Clerk will report the second committee amendment.

The Clerk read as follows:

> Page 1, line 8, strike out the words "by said company and said Oliver."

The CHAIRMAN. The question is now on agreeing to the second committee amendment.

The question was taken, and the amendment was agreed to.

Mr. EDMONDS. Mr. Chairman, I move that the committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The motion was agreed to.

Accordingly the committee rose, and the Speaker resumed the chair.

The SPEAKER. The House will be in order.

Mr. BLANTON. Mr. Speaker, I make a point of no quorum.

The SPEAKER. Will the gentleman withhold that for a moment?

Mr. BLANTON. I prefer to make it at this time, if the Speaker will hold it in order.

Mr. GARRETT of Tennessee. Mr. Speaker, I make the point of order that it is not in order to make that point at this time. The House has no official knowledge of the fact that the committee has risen until the Chairman of the Committee of the Whole has reported to the Speaker.

The SPEAKER. The Chair has stated that the House will be in order. The Chair appreciates the question of propriety which the gentleman makes, but the Chair does not think he is entitled to hold that the House is not in session.

Mr. GARRETT of Tennessee. But, Mr. Speaker, there is a slight transitory period between the Speaker taking the chair and the Chairman of the Committee of the Whole reporting, and I think there is nothing in order in that period until the Chairman of the Committee of the Whole has reported. No constitutional propositions are involved and no rights are lost. It is the transitory period of the Committee of the Whole passing back into the House.

Mr. CRAMTON. Mr. Speaker, might I suggest that if the gentleman from Tennessee is right and if it is his theory that nothing is in order until we have the report of the Chairman of the Committee of the Whole, that if the Chairman of the Committee of the Whole left the room the House would not even be able to adjourn, in that extreme case.

Mr. GARRETT of Tennessee. Well, there is no reasonable probability of any such thing as that ever occurring. Of course, we can think of many absurd things that might happen, but that is one that will probably never occur.

The SPEAKER. The Chair finds, he regrets to say, there are precedents which hold that if the point of no quorum is made the Chair can not receive the report of the Chairman of the committee.

Mr. BLANTON. Mr. Speaker, I insist upon the point of order.

The SPEAKER. The gentleman from Texas makes the point of order there is no quorum present. It is clear there is no quorum present.

Mr. LONGWORTH. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, when the following Members failed to answer to their names:

[Roll No. 9]

Ackerman	Butler	Dickstein	Gallivan
Aldrich	Byrnes, S. C.	Dominick	Gambrill
Anderson	Campbell	Doyle	Garber
Andrew	Carew	Drewry	Garner, Tex.
Anthony	Carter	Dyer	Garrett, Tex.
Bacon	Celler	Eagan	Geran
Bankhead	Clague	Evans, Iowa	Gifford
Barkley	Clancy	Evans, Mont.	Glatfelter
Beedy	Clark, Fla.	Fairchild	Goldsborough
Berger	Cole, Iowa	Fairfield	Graham
Bixler	Cole, Ohio	Faust	Green
Black, N. Y.	Connery	Fenn	Greenwood
Black, Tex.	Connolly, Pa.	Fish	Griffin
Bloom	Cooper, Ohio	Fitzgerald	Hall
Boylan	Cooper, Wis.	Fleetwood	Hardy
Brand, Ga.	Corning	Foster	Harrison
Britten	Croll	Frear	Hawes
Browne, N. J.	Cullen	Fredericks	Hawley
Browne, Wis.	Cummings	Free	Hayden
Brumm	Curry	Freeman	Hersey
Buchanan	Davey	Frothingham	Hill, Md.
Buckley	Davis, Minn.	Fuller	Holaday
Burdick	Dempsey	Funk	Howard, Nebr.

Howard, Okla.	McSwain	Prall	Thomas, Ky.
Hudson	Madden	Purnell	Thompson
Hull, Iowa	Magee, Pa.	Quayle	Tilson
Hull, Wm. E.	Major, Mo.	Rainey	Tinkham
Humphreys	Manlove	Raker	Treadway
Jacobstein	Mansfield	Ransley	Tucker
James	Mead	Rayburn	Tydings
Jeffers	Merritt	Reed, W. Va.	Vinson, Ga.
Johnson, Ky.	Miller, Ill.	Reid, Ill.	Voigt
Johnson, S. Dak.	Milligan	Richards	Wainwright
Johnson, Wash.	Mills	Rogers, Mass.	Ward, N. C.
Johnson, W. Va.	Montague	Rogers, N. H.	Ward, N. Y.
Jost	Mooney	Rosenbloom	Watres
Kahn	Moore, Ill.	Sabath	Watson
Kearns	Morgan	Sanders, N. Y.	Wefald
Kelly	Morin	Schall	Weller
Kendall	Nelson, Wis.	Schneider	Welsh
Kiess	Newton, Minn.	Seger	White, Me.
Knutson	Nolan	Sherwood	Williams, Ill.
Kunz	O'Brien	Sinnott	Williams, Mich.
Lampert	O'Connell, N. Y.	Smithwick	Winslow
Langley	O'Connor, N. Y.	Snell	Winter
Larson, Minn.	O'Sullivan	Snyder	Wolff
Lee, Ga.	Oliver, N. Y.	Spearing	Wood
Lilly	Paige	Stalker	Woodruff
Lindsay	Parker	Steagall	Woodrum
Lineberger	Patterson	Sullivan	Wright
Linthicum	Peavey	Sumners, Tex.	Wyant
Logan	Perkins	Sweet	Yates
McDuffie	Perlman	Swing	Zihlman
McKenzie	Phillips	Swoope	
McLeod	Porter	Taber	
McNulty	Pou	Tague	

Mr. LONGWORTH. Mr. Speaker, is it permissible to interrupt the announcement by making a parliamentary inquiry?

The SPEAKER. The Chair will make the announcement. Two hundred and eleven Members have answered to their names; not a quorum.

Mr. LONGWORTH. Mr. Speaker, a parliamentary inquiry. In case a motion to adjourn was carried, when would this bill be next in order? Would it be in order on the next day upon which claims were considered?

The SPEAKER. The next day upon which claims were in order.

ADJOURNMENT

Mr. LONGWORTH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 25 minutes p. m.) the House, in accordance with the order previously made, adjourned until Monday, December 15, 1924, at 11.30 o'clock a. m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

726. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report on preliminary examination of waterway between Peconic Bay and Jamaica Bay, N. Y.; to the Committee on Rivers and Harbors.

727. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, reports on preliminary examination and survey of Bayou Lacombe, La.; to the Committee on Rivers and Harbors.

728. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report on preliminary examination of Double Creek, N. J.; to the Committee on Rivers and Harbors.

729. A letter from the Secretary of the Federal Board for Vocational Education, transmitting statement showing the names of officers of the vocational education and civilian vocational rehabilitation divisions of the Federal Board for Vocational Education who traveled on official business from Washington to points outside the District of Columbia during the fiscal year 1924, with their official titles, total expenses charged to the United States under each case; to the Committee on Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. CRISP: Committee on Ways and Means. H. R. 10650. A bill to authorize the settlement of the indebtedness of the Republic of Lithuania to the United States of America; without amendment (Rept. No. 1045). Referred to the Committee of the Whole House on the state of the Union.

Mr. CRISP: Committee on Ways and Means. H. R. 10651. A bill to authorize the settlement of the indebtedness of the Republic of Poland to the United States of America, and for other purposes; without amendment (Rept. No. 1046). Referred to the Committee of the Whole House on the state of the Union.

Mr. FRENCH: Committee on Appropriations. H. R. 10724. A bill making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1926, and for other purposes; without amendment (Rept. No. 1044). Referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. WINSLOW: A bill (H. R. 10722) to provide for retirement for disability in the Lighthouse Service; to the Committee on Interstate and Foreign Commerce.

By Mr. FREDERICKS: A bill (H. R. 10723) to provide for the construction of a dam on the Colorado River for the purpose of river regulation and control, and for other purposes; to the Committee on Flood Control.

By Mr. FRENCH: A bill (H. R. 10724) making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1926, and for other purposes; committed to the Committee of the Whole House on the state of the Union.

By Mr. AYRES: A bill (H. R. 10725) to amend the Federal reserve act; to the Committee on Banking and Currency.

By Mr. COLTON: A bill (H. R. 10726) conferring jurisdiction on the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Creek Indians may have against the United States, and for other purposes; to the Committee on Indian Affairs.

By Mr. LEHLBACH: A bill (H. R. 10727) placing certain positions in the Postal Service in the competitive classified service; to the Committee on the Civil Service.

By Mr. McFADDEN: A bill (H. R. 10728) to amend the Federal farm loan act and the agricultural credits act of 1923; to the Committee on Banking and Currency.

By Mr. SPEARING: A bill (H. R. 10729) authorizing the construction of additional hospital facilities for the port of New Orleans, La., and for other purposes; to the Committee on Public Buildings and Grounds.

By Mr. COLTON (by request): A bill (H. R. 10730) to authorize the consolidation of corporations having franchises to operate street cars in the District of Columbia; to the Committee on the District of Columbia.

Also (by request), a bill (H. R. 10731) to establish uniform car rates and class rates for the transportation of freight by railroad carriers in commerce between the States; to the Committee on Interstate and Foreign Commerce.

Also (by request), a bill (H. R. 10732) to prohibit conspiracies to monopolize commerce between the States; to the Committee on Interstate and Foreign Commerce.

Also (by request), a bill (H. R. 10733) to exclude certain foreign publications from second-class mailing privileges, to increase second-class postal rates, and for other purposes; to the Committee on the Post Office and Post Roads.

Also (by request), a bill (H. R. 10734) to provide for the disposition of merchant vessels owned by the Government; to the Committee on the Merchant Marine and Fisheries.

Also (by request), a bill (H. R. 10735) to amend sections 3513 and 3515 of the Revised Statutes prescribing the weights of the silver and minor coins of the United States; to the Committee on Coinage, Weights, and Measures.

Also (by request), a bill (H. R. 10736) to rectify, coordinate, and simplify the weights and measures of the United States; to the Committee on Coinage, Weights, and Measures.

By Mr. O'CONNOR of Louisiana: A bill (H. R. 10737) authorizing the Secretary of Commerce to construct and equip a light vessel for the Passes at the entrances to the Mississippi River, La.; to the Committee on Interstate and Foreign Commerce.

By Mr. TEMPLE: A bill (H. R. 10738) to provide for the securing of lands in the southern Appalachian Mountains for perpetual preservation as a national park; to the Committee on the Public Lands.

By Mr. BRITTEN: A bill (H. R. 10739) to authorize the Secretary of the Navy to proceed with the construction of certain public works at the naval air station, Pensacola, Fla.; to the Committee on Naval Affairs.

By Mr. COLTON (by request): A bill (H. R. 10740) for the promotion of commerce, the provision of revenue, and the reduction of the public debt; to the Committee on Banking and Currency.

By Mr. JAMES: Joint resolution (H. J. Res. 308) authorizing the Secretary of War to loan cots, bedding, and camp equipment, not including tentage, for use of the Modern Woodmen of America Foresters at their national quadrennial encampment to be held at Milwaukee, Wis., in June, 1925; to the Committee on Military Affairs.

By Mr. McKEOWN: Joint resolution (H. J. Res. 309) proposing an amendment to the Constitution of the United States fixing the terms of Members of Congress; to the Committee on Election of President, Vice President, and Representatives in Congress.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ARNOLD: A bill (H. R. 10741) granting an increase of pension to Bethena Starkey; to the Committee on Invalid Pensions.

By Mr. BEGG: A bill (H. R. 10742) granting an increase of pension to Millie Burton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10743) granting an increase of pension to Mell A. Jones; to the Committee on Invalid Pensions.

By Mr. BELL: A bill (H. R. 10744) granting an increase of pension to William H. Duncan; to the Committee on Invalid Pensions.

By Mr. CAREW: A bill (H. R. 10745) granting a pension to Harriet I. Gardner; to the Committee on Invalid Pensions.

By Mr. DEAL: A bill (H. R. 10746) for the relief of G. Ferlita; to the Committee on Claims.

By Mr. GIBSON: A bill (H. R. 10747) granting an increase of pension to Mersilvia A. Quaid; to the Committee on Invalid Pensions.

By Mr. GILBERT: A bill (H. R. 10748) granting a pension to Claud F. Dunn; to the Committee on Pensions.

Also, a bill (H. R. 10749) granting a pension to Maude Grinstead; to the Committee on Pensions.

Also, a bill (H. R. 10750) granting a pension to Sallie A. Hooper; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10751) granting a pension to Mary Million; to the Committee on Pensions.

By Mr. HAWLEY: A bill (H. R. 10752) for the relief of Horace G. Wilson; to the Committee on Claims.

By Mr. HUDSON: A bill (H. R. 10753) for the relief of Charles H. Reed; to the Committee on Military Affairs.

By Mr. HULL of Iowa: A bill (H. R. 10754) to reimburse certain fire insurance companies the amounts paid by them for property destroyed by fire in suppressing bubonic plague in the Territory of Hawaii in the years 1899 and 1900; to the Committee on Claims.

By Mr. KEARNS: A bill (H. R. 10755) granting an increase of pension to Anna McCann; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10756) granting an increase of pension to Lucinda D. Woods; to the Committee on Invalid Pensions.

By Mr. LOGAN: A bill (H. R. 10757) granting an increase of pension to James O. Ladd; to the Committee on Invalid Pensions.

By Mr. McKENZIE: A bill (H. R. 10758) granting an increase of pension to Helen Underwood; to the Committee on Invalid Pensions.

By Mr. MILLIGAN: A bill (H. R. 10759) granting a pension to Mahala D. Heriford; to the Committee on Invalid Pensions.

By Mr. PRALL: A bill (H. R. 10760) for the relief of Robinson Newbold; to the Committee on Claims.

By Mr. RUBEY: A bill (H. R. 10761) granting a pension to Anna Lee Adams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10762) granting a pension to Anna Hudson; to the Committee on Invalid Pensions.

By Mr. SINCLAIR: A bill (H. R. 10763) for the relief of William Lentz; to the Committee on Military Affairs.

By Mr. WILLIAMS of Michigan: A bill (H. R. 10764) granting a pension to Evvah A. Dickson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 10765) granting an increase of pension to Katherine Whitaker; to the Committee on Invalid Pensions.

By Mr. WOODRUFF: A bill (H. R. 10766) granting an increase of pension to Eva Briggs; to the Committee on Invalid Pensions.

By Mr. MOORE of Illinois: Resolution (H. Res. 381) to pay Minnie Conway, widow of William Conway, late laborer of the House of Representatives, a sum equal to six months' salary and $250 for funeral expenses; to the Committee on Accounts.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3195. By the SPEAKER (by request): Petition of the Susan B. Anthony Foundation, Washington, D. C., favoring distribution by Congress of literature dealing with the perils of the narcotic question; to the Committee on Printing.

3196. By Mr. ANDREW: Petition of the Virginia State Chamber of Commerce, advocating the federalization of the Cape Cod Canal, Mass.; to the Committee on Interstate and Foreign Commerce.

3197. Also, petition of the Massachusetts Department of the Army and Navy Union, United States of America, favoring the immediate enactment of House bill 5934, the so-called Knutson bill, proposing to increase the pensions of Civil and Spanish War veterans and their widows and children; to the Committee on Pensions.

3198. By Mr. BIXLER: Petition of residents of Sheffield, Pa.; and vicinity, opposing compulsory Sunday observance laws, etc.; to the Committee on the District of Columbia.

3199. Also, petition of residents of Youngsville, Irvine, and Warren, opposing Sunday observance laws, etc.; to the Committee on the District of Columbia.

3200. Also, petition of residents of Youngsville and Warren, in Warren County, Pa., opposing compulsory Sunday observance laws; to the Committee on the District of Columbia.

3201. By Mr. GALLIVAN: Petition of Hon. James M. Curley, mayor of the city of Boston, Mass., recommending extension of the Air Mail Service to Boston, Mass.; to the Committee on the Post Office and Post Roads.

3202. By Mr. GARBER: Petition of the National Industrial Traffic League, New York City, N. Y., expressing its opposition to statutory rate making; to the Committee on Interstate and Foreign Commerce.

3203. Also, petition of citizens of Gate and Knowles, Okla., opposing the passage of Senate bill 3218; to the Committee on the District of Columbia.

3204. By Mr. GIBSON: Petition of citizens of Jamaica, Windham County, Vt., protesting against the passage of compulsory Sunday observance bill (S. 3218); to the Committee on the District of Columbia.

3205. By Mr. GREEN: Petition of Soren C. Chrestensen and others, of Atlantic, Iowa, in opposition to Senate bill 3218; to the Committee on the District of Columbia.

3206. Also, petition of H. M. Robinson and others, of Council Bluffs, Iowa, in opposition to Senate bill 3218; to the Committee on the District of Columbia.

3207. By Mr. JOST: Petition of retired Federal postal employees, praying for passage of House bill 8202; to the Committee on the Civil Service.

3208. By Mr. SHREVE: Petition of Erie Tent, No. 1, the Maccabees, Erie, Pa.; Erie Lodge, No. 327, Knights of Pythias, Erie, Pa.; Harriet V. Gridley Auxiliary, Army and Navy Union, Erie, Pa.; and John Braden Post, No. 488, Grand Army of the Republic, North East, Pa., that pension of Civil War veterans be increased to $72 per month, their widows to $50, those that are totally disabled to $125, and that these increase ratings include veterans of Indian wars and their widows; that the Knutson bill (H. R. 5934) be passed by Congress, providing for increase in pensions for veterans of Spanish War, Philippine insurrection, China relief expedition, and their widows; to the Committee on Pensions.

3209. By Mr. STRONG of Pennsylvania: Petition of residents of Indiana County, Pa., opposed to the compulsory Sunday observance bill and any other national religious legislation; to the Committee on the District of Columbia.

3210. By Mr. TAYLOR of West Virginia: Petition of Z. M. Trowbridge and 58 others, against the enactment of Senate bill 3218; to the Committee on the District of Columbia.

3211. By Mr. TILLMAN: Petition of citizens of Arkansas against the passage of Senate bill 3218; to the Committee on the District of Columbia.

SENATE

MONDAY, *December 15, 1924*

(Legislative day of Wednesday, December 10, 1924)

The Senate met at 11.50 o'clock a. m., on the expiration of the recess.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Secretary will call the roll.